

~~C.L.C.2.~~

76

No.

Supreme Court of Ceylon
Nos. 118 & 119 of the year 1944

1947
28 MAR 1951
District Court, Colombo
Case No. 586/D

IN HIS MAJESTY'S PRIVY COUNCIL ON
AN APPEAL FROM THE SUPREME
COURT OF CEYLON

14 JUL 1953
Plaintiff-Respondent

BETWEEN

MERLE ALLES *nee* DE COSTA of Kandana.....

Plaintiff-Respondent

AND

S. ALLES, Advocate, of Colombo.....*Defendant-Appellant*
(also referred to as *1st Defendant*)

AND

DR. T. S. M. SAMAHIN of Dambulla..... *Added Defendant-Respondent*
(also referred to as *2nd Defendant*)

RECORD
OF PROCEEDINGS

25, ROSSALL STREET
LONDON,

INDEX—PART I.

NOTE.—The Defendant is also referred to as 1st Defendant, and the Added-Defendant is also referred to as 2nd Defendant.

Serial No.	Description of Document	Date	Page
1	Plaint of the Plaintiff	2nd April, 1942	1
2	Plaintiff's Petition for Alimony, &c., <i>Pendente lite</i>	7th April, 1942	3
3	Plaintiff's Affidavit for Alimony, &c., <i>Pendente lite</i>	17th April, 1942	4
4	Defendant's Affidavit <i>re</i> Alimony, &c., <i>Pendente lite</i>	26th June, 1942	5
5	Inquiry <i>re</i> payment of Alimony, &c., <i>Pendente lite</i>	1st July, 1942	6
6	Terms of Settlement <i>re</i> Alimony, &c.	1st July, 1942	21
7	Interlocutory Decree of the District Court ...	1st July, 1942	22
8	Answer of Defendant	21st July, 1942	22
9	Answer of Added-Defendant	28th August, 1942	23
10	Plaintiff's Interrogatories	1st September, 1942	24
11	Replication of the Plaintiff	3rd September, 1942	25
12	Plaintiff's motion to discover 1st Defendant's Documents	4th September, 1942	25
13	1st Defendant's motion to have a Blood-test ...	30th September, 1942	26
14	Defendant's Answer to Interrogatories ...	1st October, 1942	26
15	Defendant's Affidavit <i>re</i> discovery of Documents	1st October, 1942	27
16	Plaintiff's motion to inspect 1st Defendant's Documents	6th October, 1942	27
17	Plaintiff's motion for an Order of Court on 1st Defendant to admit genuineness of Document	6th October, 1942	28
18	Inquiry <i>re</i> holding of a Blood-test	16th October, 1942	28
19	Order relating to answering of Interrogatories ...	23rd October, 1942	30
20	1st Defendant's motion to discover Plaintiff's Documents	27th October, 1942	35
21	Defendant's further Affidavit <i>re</i> discovery of Documents	29th October, 1942	35

LONDON

30089

iii

PART I.—(Contd.)

Serial No.	Description of Document	Date	Page
22	Defendant's further Answer to Interrogatories ...	29th October, 1942 ...	36
23	Further Order relating to Interrogatories ...	30th October, 1942 ...	36
24	Plaintiff's Affidavit <i>re</i> discovery of Documents ...	9th November, 1942 ...	37
25	1st Defendant's further motion to discover Plaintiff's Documents ...	20th November, 1942 ...	38
26	Order relating to discovery of Documents ...	4th December, 1942 ...	38
27	Further Order relating to discovery of Documents	5th December, 1942 ...	40
28	Issues framed ...	11th December, 1942 ...	41
29	Plaintiff's evidence ...	— ...	43
30	Defendant's evidence ...	— ...	44
31	Added Defendant's evidence ...	— ...	285
32	Plaintiff's further evidence ...	— ...	376
33	Defendant's further evidence ...	— ...	377
34	Plaintiff's further evidence ...	— ...	381
35	Plaintiff's further evidence (Refusal of Court to hear Dr. Theobald) ...	— ...	520
36	Plaintiff's further evidence ...	— ...	521
37	Addresses to Court ...	— ...	619
38	Plaintiff's Motion to call Dr. G. W. Theobald ...	21st January, 1943 ...	624
39	Judgment of the District Court ...	27th February, 1943 ...	624
40	Decree Nisi for Divorce entered by the District Court ...	27th February, 1943 ...	706
41	Petition of Appeal of the Added-Defendant to the Supreme Court ...	9th March, 1943 ...	707
42	Petition of Appeal of the Plaintiff to the Supreme Court ...	10th March, 1943 ...	710
43	Decree Absolute Entered by the District Court ...	28th May, 1943 ...	726
44	Judgment of the Supreme Court ...	11th May, 1945 ...	726

PART I.—(Contd.)

Serial No.	Description of Document	Date	Page
45	Decrees of the Supreme Court	11th May, 1945 ...	742
46	Petition for Conditional Leave to Appeal to His Majesty's Privy Council	1st June, 1945 ...	744
47	Judgment of the Supreme Court granting Conditional Leave to Appeal	3rd August, 1945 ...	745
48	Decree of the Supreme Court granting Conditional Leave to Appeal	3rd August, 1945 ...	746
49	Application for Final Leave to Appeal	24th August, 1945 ...	747
50	Decree of the Supreme Court granting Final Leave to Appeal	19th October, 1945 ...	749

PART II.
EXHIBITS.

**Plaintiff's Documents Filed at Inquiry *re* Payment of
Alimony, &c., Pendente Lite.**

Exhibit No.	Description of Document	Date	Page
X 1	Letter	14th January, 1942 ...	785
X 2	Letter	16th January, 1942 ...	786
X 3	Letter	31st January, 1942 ...	786
X 4	Envelope	(Undated)	786
X 5	Defendant's Bank Pass Book	1941	—*

* Not transmitted.

Plaintiff-Respondent's Documents Filed at Trial

Exhibit No.	Description of Document	Date	Page
P 1	Marriage Certificate (Reproduced as annexure to Plaint)	27th June, 1933	2
P 2	Letter	19th December, 1941	781
P 3	Last Will of J. M. Alles	27th October, 1938	751
P 4	Letter	20th June, 1941	774
P 5	Letter	3rd January, 1941	759
P 6	Letter	11th September, 1940	758
P 7	Letter	7th February, 1941	760
P 8	Letter	18th February, 1941	761
P 9	Letter	14th February, 1941	760
P 10	Letter	8th March, 1941	763
P 11	Letter	31st July, 1941	779
P 12	Letter	5th April, 1941	764
P 13	Letter	23rd April, 1941	765
P 14	Letter	4th June, 1941	772
P 15	Letter	11th March, 1941	763
P 16	Letter	1st May, 1941	768
P 17	Letter	28th April, 1941	766
P 18	Letter	4th May, 1941	768
P 19	Letter	12th May, 1941	771
P 20	Letter	14th May, 1941	771
P 21	Letter	3rd July, 1941	775
P 22	Letter	21st July, 1941	778
P 23	Copy of Prescription of Dr. Wickramasooriya	1st December, 1942	788
P 24	Letter	11th July, 1941	777
P 25	Letter	15th July, 1941	777
P 26	Letter	20th February, 1941	761
P 27	Letter	15th August, 1941	780
P 28	Letter	9th May, 1941	769
P 29	Letter	16th June, 1941	773
P 30	Letter	19th June, 1941	774
P 31	Chit from 1st Defendant to Plaintiff	27th December, 1941	783
P 32	Letter	27th December, 1941	784
P 33	Letter	18th March, 1941	764
P 34	Letter	7th May, 1941	769
P 35	Sketch of Outschoorn's House	—	793
P 36	Prescription of Dr. F. Gunasekera	9th July, 1941	776
P 37	Prescription of Dr. F. Gunasekera	11th July, 1941	776
P 38	Letter	9th May, 1941	770
P 39	Letter	25th February, 1941	762
P 40	Book of Account of Plaintiff	(Undated)	—*
P 40A	Extract from P 40, Book of Account of Plaintiff	January, 1941	759
P 41	Photograph	(Undated)	—*
P 42	Card	1940	759
P 43	Card	1941	785
P 44	Letter	6th August, 1941	780

* Not transmitted.

Plaintiff-Respondent's Documents Filed at Trial—Contd.

Exhibit No.	Description of Document	Date	Page
P 45	Letter ... ' ...	28th May, 1941	772
P 46	Photograph ...	(Undated)	—*
P 47	Letter ...	20th July, 1942	787
P 48	Envelope ...	(Undated)	791
P 48A	Letter ...	do.	790

* Not transmitted.

1st Defendant-Appellant's Documents Filed at Trial

Exhibit No.	Description of Document	Date	Page
1 D 1	Extract from Jaffna Rest-house Occupation Book	1941	784
1 D 2	Travelling Claim of 1st Defendant	1941	—*
1 D 3	Plan of Merlton	Undated)	795
1 D 4	Extract from Police Information Book	19th December, 1941	781
1 D 5	Letter	22nd December, 1941	782
1 D 6	Agreement signed by 1st Defendant and his Brothers	21st June, 1939	757
1 D 7	Certificate	5th January, 1942	785
1 D 8	Letter	30th October, 1942	787
1 D 9	Letter	20th November, 1942	787
1 D 10	Statement of leave taken	1941-1942	790
1 D 11	Letter	14th December, 1942	788
1 D 12	Sketch of Jayawickrema's Bungalow	(Undated)	794
1 D 13	Statement of Telephone Trunk Calls	1942	789
1 D 14	Belihul-oya Rest-house Visitors' Book	(Undated)	—*
1 D 15	Welimada Rest-house Visitors' Book	do.	—*
1 D 16	Certificate of Posting	20th December, 1941	782
1 D 17	Pelmadulla Rest-house Visitors' Book	10th April, 1941	767
1 D 18	Letter	12th April, 1933	751
1 D 19	Bank Statement	1943	792
1 D 20	Letter	22nd January, 1943	791

* Not transmitted.

Added Defendant-Respondent's Documents Filed at Trial

Exhibit No.	Description of Document	* Date	Page
2 D 1	Letter	17th July, 1941 ...	778
2 D 2	Letter	23rd July, 1941 ...	779
2 D 3	Letter	22nd June, 1941 ...	775
2 D 4	Personal Diary of Added-Defendant (missing)	—	—*
2 D 5	Envelope	(Undated)	792
2 D 6	Letter	19th December, 1942 ...	788
2 D 7	Letter	22nd December, 1942 ...	789
2 D 8	Letter	14th January, 1943 ...	791

* Not transmitted.

No.....

Supreme Court of Ceylon

Nos. 118 & 119 of the year 1944

District Court, Colombo

Case No. 586/D

IN HIS MAJESTY'S PRIVY COUNCIL ON
AN APPEAL FROM THE SUPREME
COURT OF CEYLON

BETWEEN

MERLE ALLES *nee* DE COSTA of Kandana.....*Plaintiff-Respondent*

AND

S. ALLES, Advocate, of Colombo.....*Defendant-Appellant*
(also referred to as 1st Defendant)

AND

DR. T. S. M. SAMAHIN of Dambulla.....*Added Defendant-Respondent*
(also referred to as 2nd Defendant)

RECORD OF PROCEEDINGS

PART I.

No. 1.

No. 1
Plaint
of the
Plaintiff
2-4-42.

Plaint of the Plaintiff.

IN THE DISTRICT COURT OF COLOMBO.

MERLE ALLES *nee* DE COSTA of Fairlight, Kandana.....*Plaintiff*.

No. 586 D.

vs.

(1) S. ALLES Advocate, of Laurentum, Ward Place, Colombo..*Defendant*.

(2) DR. T. S. M. SAMAHIN of Dambulla.....*Added Defendant*.

On this 2nd day of April, 1942.

The plaintiff of the Plaintiff abovenamed appearing by Merrill Wilson Pereira, Lionel Donald Stewart Gunasekera, Corbert Edward Jayewardene and Edgar Dennis Samarawickrema practising in partnership under the name style and firm of " Merrill Pereira & Gunasekera " and their assistant Alfred Lionel Gunasekera, her Proctors state as follows :—

1. The defendant to this action resides in Colombo within the jurisdiction of this Court.

2. The plaintiff was married to the defendant on the 21st day of June, 1933 at St. Mary's Church, Lauries Road, Bambalapitiya in Colombo. A copy of the marriage certificate is herewith annexed marked " A ". There are two children of the said marriage, viz.: a girl named Pauline Frances Hortense born on the 30th June, 1938, and a boy named Joseph Richard born on the 26th March, 1942.

3. After the said marriage the plaintiff and the defendant lived together in Colombo until the date set out hereinafter.

4. On or about the 19th December, 1941, the defendant wrongfully and maliciously and at the instigation of his mother deserted the plaintiff taking with him the said child Hortense and refuses to return her to the plaintiff in spite of requests to him.

5. A cause of action has therefore accrued to the plaintiff to sue the defendant for a judicial separation, for alimony, for the custody of the said child and for maintenance in respect of each of the said two children.

Wherefore the plaintiff prays :—

(i.) For a decree of judicial separation between the plaintiff and the defendant ;

(ii.) For the custody of the said children ;

No. 1
Plaint
of the
Plaintiff
2-4-42—
continued.

(iii.) For permanent alimony at the rate of Rs. 200 per month for the plaintiff and Rs. 50 a month for each of the said children and for alimony *pendente lite* at the rate of Rs. 200 per month till decree is entered in this case ;

(iv.) For costs ; and

(v.) For such other and further relief as to this Court shall seem meet.

Sgd. MERRILL PEREIRA & GUNASEKERA,
Proctors for Plaintiff.

Documents Filed with the Plaintiff.

Certificate of Marriage referred to in the Plaintiff marked " A ". 10

" A " Certificate of Marriage.

No. 1656.

Register of a Marriage in the Colombo District Division of the Colombo District of the Western Province.

	Male Party	Female Party	
1. Names in full of parties :	Joseph Stanislaus Alles	Esme Winifred de Costa	
2. Age (in years) :	Twenty-eight	Twenty	
3. Civil condition :	Bachelor	Spinster	
4. Rank or Profession and Nationality	Barrister-at-law, Ceylon	Ceylon Tamil	20
5. Residence :	Sumner Place, Borella	"Rockmore," Gregory's Road	
6. Father's name :	Francis Richard Alles	Paul Emmanuel de Costa	
7. Rank or Profession of Father :	Doctor	Merchant	
8. Name and Division of Registrar who issued certificate :	C. M. Agalawatte, Colombo Town.		
9. Place of solemnization of Marriage :	St. Mary's Church, Lauries Road, Colombo.		

Solemnized by me this Twenty-first day of June, 1933.

Sgd. T. N. ALLES,
Minister.

This marriage was solemnized
between us in the presence of :

Sgd. STANISLAUS ALLES
Sgd. MERLE DE COSTA

No. 1
Plaint
of the
Plaintiff
2-4-42.—
continued.

Signature of witnesses :

Sgd. H. WATKINS

Haden Watkins, Merchant, Marshe, Horton Place, Colombo.

Sgd. A. R. QUARME,

Arthur Roger Quarme, General Manager, Messrs. Brown & Co.
Colombo.

Signed before me :

10 Sgd. T. N. ALLES,
Minister.

No. 2.

Plaintiff's Petition for Alimony, &c. pendente lite.

No. 2
Plaintiff's
Petition for
Alimony &c.
pendente lite
7-4-42.

THE PETITION OF THE PETITIONER (Plaintiff).

On this 7th day of April, 1942.

1. The petitioner is the plaintiff abovenamed and the respondent is the defendant in the above action.

2. The petitioner filed the above action for a judicial separation *a mensa et thoro* from the defendant to whom the petitioner was married on
20 the 21st June, 1933.

3. There are two children of the marriage a girl named Pauline Frances Hortense born on the 30th June, 1938, and a boy named Joseph Richard born on the 26th March, 1942.

4. The defendant-respondent abovenamed wrongfully and maliciously and at the instigation of his mother deserted the petitioner on or about the 19th December, 1941, taking with him the said child Hcrtense whom he refuses to return.

5. It is in the best interests of the said child that she should be entrusted to the petitioner's custody pending this action.

30 6. The petitioner is not possessed of any income whatsoever and is solely dependent upon the charity of her father for herself and her younger child.

7. The respondent is a Barrister-at-law and an Advocate of the Supreme Court practising his profession in Colombo. He has frequently during the past 3 years acted as a Crown Counsel and the petitioner verily believes that the respondent's average nett income exceeds Rs. 750 per month. The respondent also receives substantial sums of money from time to time from his mother who is a lady of considerable means.

No. 2
Plaintiff's
Petition for
Alimony &c.
pendente lite
7-4-42.—
continued.

8. The petitioner requires at least Rs. 50 each per month for the maintenance for each of the said children.

9. The petitioner requires reasonable sums of money to cover the expenses of prosecuting this action and a sum of Rs. 300 will be sufficient for the present. The petitioner asks the right be reserved to her to make such further application for costs as may become necessary.

10. A reasonable sum as alimony *pendente lite* for the petitioner will be Rs. 200 per month.

Wherefore the petitioner prays :—

(a) That the respondent be ordered to pay the petitioner a sum of 10 Rs. 200 per month as alimony *pendente lite* commencing from 2nd April, 1942.

(b) That the respondent be ordered to pay a sum of Rs. 50 a month for each of the said children, for their maintenance.

(c) That the respondent be ordered to pay Rs. 300 to cover the expenses of prosecuting this action and that the right be reserved to the petitioner to make such further applications for costs as may become necessary.

(d) For the custody of the said children.

(e) For costs of this application; and

(f) For such other and further relief as to this Court shall seem meet.

20

Sgd. MERRIL PEREIRA & GUNASEKERA,
Proctors for Plaintiff-Petitioner.

No. 3.

Plaintiff's Affidavit for Alimony, &c. pendente lite.

No. 3
Plaintiff's
Affidavit for
Alimony &c.
pendente lite
1/7-4-42.

AFFIDAVIT :

I, Merle Alles (*nee* de Costa) of "Fairlight," Kandana, being a Christian do make oath and state as follows :—

1. I am the plaintiff-petitioner abovenamed and the respondent is the defendant in the above action. 80

2. I filed action for a judicial separation *a mensa et thoro* from the defendant to whom I was married on the 21st June, 1933.

3. There are two children of the marriage a girl named Pauline Frances Hortense born on the 30th June, 1938, and a boy named Joseph Richard born on the 26th March, 1942.

4. The defendant-respondent abovenamed wrongfully and maliciously and at the instigation of his mother deserted me on or about the 19th December, 1941, taking with him the said child Hortense whom he refuses to return.

5. It is in the best interests of the child that she should be entrusted to my custody pending this action.

6. I am not possessed of any income whatsoever and am solely dependant upon the charity of my father for myself and my younger child.

7. The respondent is a Barrister-at-law and an Advocate of the Supreme Court practising his profession in Colombo. He has frequently during the past 3 years acted as a Crown Counsel and I verily believe that the respondent's average nett income exceeds Rs. 750 per month. The respondent also received substantial sums of money from time to time from his mother who is a lady of considerable means.

8. I require at least Rs. 50 each per month for the maintenance of each of my children.

9. I require reasonable sums of money to cover the expenses of prosecuting this action and a sum of Rs. 300 will be sufficient for the present. I further ask the right to be reserved to me to make such further application for costs as may become necessary.

10. A reasonable sum as alimony *pendente lite* for me will be Rs. 200 per month.

The foregoing affidavit having been duly read over by the deponent abovenamed and she understand the contents thereof signed and sworn to at Colombo on this 1st/7th day of April, 1942.

Sgd. MERLE ALLES.

Before me :

Sgd. ALBERT PEIRES,

J. P.

No. 4.

Defendant's Affidavit *re* Alimony, &c. *pendente lite*.

I, Stanislaus Alles of Laurentum, Ward Place, Colombo, make oath and say as follows :—

1. I am the deponent abovenamed and the defendant in this action.
2. I admit the averments in paragraphs 1 and 2 of the plaintiff's affidavit.

3. The averments in paragraphs 3 and 4, I am advised are not material to the present applications.

4. I deny the averment in paragraph 5 of the plaintiff's affidavit. The child Hortense was with me at and prior to the date of the institution of this action. As the father of the said child I am her lawful guardian

No. 3
Plaintiff's
Affidavit for
Alimony &c.
pendente lite
1/7-4-42.—
continued.

No. 4
Defendant's
Affidavit *re*
Alimony &c.
pendente lite
26-6-42.

No. 4
Defendant's
Affidavit *re*
Alimony, &c.
pendente lite
26-6-42.—
continued.

and have a preferrent right to her custody. It is also in the best interests of the child that she should remain in my custody during the pendency of this action. The child is being well looked after and cared for by my mother.

5. I admit I am a Barrister-at-law and an Advocate. I admit also that during the past 3 years I have from time to time acted as Crown Counsel. I deny however that my nett income exceeds or even approaches Rs. 750 per mensem. I state that in making the said allegation with regard to my income the plaintiff has sworn to something that she well knew to be false. 10

6. Inclusive of all salary I have received as Acting Crown Counsel my gross average monthly income for the past 3 years has been Rs. 182.86. My nett average monthly income for the said period has been about Rs. 132.86. I ceased to act as Crown Counsel about August last year and for the whole period between September, 1941, and May, 1942, my gross income was Rs. 94.50. My nett income for that period was less than nothing.

7. I am willing to pay to the plaintiff as alimony *pendente lite* 1/5 of my nett average monthly income for the past 3 years and for the maintenance of the child Joseph Richard during the pendency of this²⁰ action such sum as the Court thinks reasonable under all the circumstances. I am unable to afford much towards the costs of the plaintiff's action.

Signed and sworn to at Colombo
on this 26th day of June, 1942.

Sgd. STANISLAUS ALLES.

Before me :

Sgd. E. R. DE SILVA,
J. P.

No. 5.

Inquiry *re* Payment of Alimony, &c. *pendente lite*.

No. 5
Inquiry *re*
payment of
Alimony, &c.
pendente lite
1-7-42.

PROCEEDINGS :

30

1-7-42.

ADVOCATE GRATIAEN for the plaintiff.

ADVOCATE WICKRAMANAYAKA for the defendant with ADVOCATE ALLES.

MR. WICKRAMANAYAKA files the affidavit of the defendant.

MR. GRATIAEN says he wishes to examine the defendant on the affidavit.

MR. WICKRAMANAYAKA says the onus is on the plaintiff.

MR. GRATIAEN says plaintiff is a wife who has no income whatever and it is not suggested she has any income. She is entitled to 1/5th of the nett income at least.

I rule that the plaintiff must begin.

MR. GRATIAEN calls :

MERLE ALLES—Sworn.

Plaintiff : Wife of the defendant. I am now living with my father at Kandana. It is a few miles distant from Colombo. I have my second
10 child living with me. The child is three months old and it is a boy. There are two children, one is 4 years old and that child is with my husband. That child is a girl. Until the defendant left my house I looked after the girl Hortense.

My husband in his professional capacity was Acting Crown Counsel at Jaffna for some months. When he went there he left the child with me. It was never suggested that I did not look after the child properly.

(To Court :

My husband is not in the Attorney-General's Department now).

Ever since that child Hortense was born I was solely concerned in
20 bringing up the child. I am now living with my father Paul de Costa. I say that I am the proper person to look after a young girl four years of age.

(Mr. Wickremanayake in answer to me says there is no dispute as to the custody of the infant).

The infant was born after the defendant left the house. I could provide the only proper and suitable home for my child who is of tender years. Except in the ordinary way in which a father plays with his children the defendant does not look after the child in any way. He
30 does not bathe and clothe the child.

(To Court :

My husband was in active practice as an Advocate and he goes every morning to work. He goes at 9 o'clock and comes at 4 or 4-30 and when he comes home he reads the papers. He used to study in the evenings now and again not always. Most of the day he was away and I had to look after the household).

That was the position even when there were no disputes of any kind.

When he goes to Jaffna as Acting Crown Counsel he is away for two or three days.

40 (To Court :

I did not go and live with him there because he could not afford to have me there. He lived in the resthouse and I used to go up for the week end).

No. 5
Inquiry re
payment of
Alimony, &c.
pendente lite
1-7-42.—
continued.

Plaintiff's
evidence
Merle Alles
examination.

No. 5
Inquiry re
payment of
Alimony, &c.
pendent lite.
Plaintiff's
evidence,
Merle Alles
examination.
—continued.

During those 7 months there were no quarrels between us. He has also been Crown Counsel in Batticaloa and various outstations. I have no personal knowledge about the precise income which my husband earned as a lawyer because my husband never showed me his accounts.

We lived throughout our married life in a bungalow known as Merlton for about 2 years. That was a house which my father provided free of rent. Prior to that the bungalow was occupied by the late Mr. H. E. Garvin when he was an Advocate at a rental of Rs. 200 a month.

I had a fair staff. I have been brought up in comfortable circumstances always. When I married my father was a wealthy man and very comfortably off.

Q. Your husband also had wealthy parents? A. Very wealthy parents.

Q. And did you after you were married continue to live in the same circumstances in which you both have been brought up? A. My husband provided me with everything to the best of his ability.

(To Court :

Q. A person who is an Advocate and Crown Counsel has certain status to maintain? A. Yes.)

We entertained society people.

20

Q. Did your husband give you a certain amount regularly every month for running the house? A. Yes, Rs. 175 every month. Apart from that he used to pay the gas bill, etc. All the bills were paid by my husband.

(To Court :

Q. That was for marketing merely? A. Daily expenses and to pay the servants their wages. He paid all the bills. The gas bill, the electric bill, the Elephant House bills for sodas, etc. were paid by my husband.)

In addition to that I was given Rs. 175 to pay the servants and run the house.

(To Court :

It is my father who gave the children their dresses. My own dress allowance was managed by me. Whenever I wanted anything I went to my father.)

I am not an only daughter. I have a sister.

We keep whiskey and liquor in the house for entertaining friends. That was paid for by my husband. I had credit accounts at Borella Stores and various shops.

My husband was a keen member of the Turf Club.

40

(To Court :

He goes every Saturday to the Race Course. He did not own horses.)

When he was in Jaffna as Crown Counsel he used to send me or his friends money to back horses.

I had a motor car. The chauffeur was paid Rs. 35 a month. It was a Vauxhall 14.

My husband was once a member of the Sinhalese Sports Club and the Lawn Club. The Lawn Club he gave up soon after he married and the Sinhalese Sports Club about a year or two ago. He used to go there for tennis. He now lives at his mother's residence in Colombo.

My husband always had money and whenever I wanted any money he always got it for me.

(To Court :

Q. When he was Acting Crown Counsel did you not know how much his salary was? *A.* He used to say it was about Rs. 500 odd a month.)

Q. He used to talk to you about his work in the Courts? *A.* He rarely spoke to me about his business.

He always attended the Courts.

With regard to Hortense the 4-year old child I produce letter dated 14-1-42 X1 from plaintiff's proctor to the defendant. I produce the original X2 dated 16-1-42. Since that date I have not been able to see my child Hortense. Yesterday was the child's birthday. She was 4 years old yesterday. I had no opportunity of seeing the child. I am very devoted to my child.

I once sent a present of four jumpers and they were returned by Mr. Alles' brother.

(To Court :

I did not send a birthday present yesterday because I thought it would be returned. I even thought of sending a wire but I did not because it might have been returned.)

Q. He made it clear to you that you can have no access to your child? *A.* Yes.

In the interests of the child I think that she should have my companionship.

XXD.

I swore an affidavit in support of this application. That was a statement I was making on oath.

Q. You have stated in the affidavit para 7 that you believe your husband's nett income exceeded Rs. 750 a month? *A.* I said that in my affidavit.

Q. At the time you married, your husband had no income practically?
40 *A.* Yes.

Q. So much so that he and you lived in your father's house? *A.* Yes.

Q. You were entirely supported by your father? *A.* Yes.

No. 5
Inquiry re
payment of
Alimony, &c.
pendente lite.
Plaintiff's
evidence,
Merle Alles
examination
—continued.

Plaintiff's
evidence,
Merle Alles
Cross-
examination

No. 5
Inquiry re
payment of
Alimony, &c.
pendente lite.
Plaintiff's
evidence,
Merle Alles
Cross-
examination.
—continued.

(To Court :

My husband's mother is alive but not his father. My husband has not inherited anything from his father, all the property has been left at the discretion of his mother. He will have nothing so long as his mother is alive.

Q. His mother was helping him? A. Not after we married.

Q. Was the marriage against the wish of defendant's mother? A. Yes, the mother and father.)

His mother never helped us after we married and we were supported by my father. I was living in my father's house at Gregory's Road for a considerable time. After that we shifted to Shady Grove Avenue and during that time my husband was allowed by my father to take the rent of "Merlton."

(To Court :

That house was named after me.)

The rent of that house was not the sole means of my husband, my father also made an allowance for the house rent we paid.

Q. When your husband was taken on as Acting Crown Counsel it was something very welcome to both of you because that was a steady income? A. Yes. 20

Q. As Acting Crown Counsel he was getting something in the neighbourhood of Rs. 500? A. Yes.

Q. And that was very much more than he ever earned? A. Yes.

Q. At the Bar he earned practically nothing? A. Yes. Whatever he earned he never told me anything about it. I do not think he earned anything.

Q. You knew he had very little practice at the Bar? A. He always said he had a fair practice.

Q. And it is because he had no practice that he accepted that work as Crown Counsel? A. He always liked to be Crown Counsel. 30

Q. You told us that he was always spending money paying bills and all that sort of thing? A. Yes.

Q. For that purpose he was always borrowing moneys, you know? A. I do not know.

Q. You have signed promissory notes for him? A. Yes, I did just before he left the house.

Q. Was that the only note you signed? A. Two notes.

(To Court :

Q. What was the amount? A. That was never shown to me. When I signed the note he covered it with a blotter and asked me to sign on the stamp. On each occasion that I signed the amount was not shown to me, it was covered with a blotting paper. 40

Q. You signed each note three times? A. My full name and then my signature.

Q. Once on the stamp, once on the top and once in the margin?

A. Yes.

Q. When you signed in the margin did you not see the amount?

A. No.)

I signed the notes just before he left the house, somewhere in November or so.

Q. And you signed one as early as 1939? A. I am not certain.

10 Q. 24th October, 1939? A. I signed two notes in Merlton.

Q. You remember one in favour of Daniel? A. Yes.

Q. That was in October, 1939? A. Yes.

Q. Thereafter you signed in November, 1941, in favour of a chetty?

A. Yes.

Q. Did you know that he was spending these moneys which he borrowed? A. When he said he was borrowing money he did not say he was spending it for the house. He did not spend it on me. I know he was borrowing moneys.

20 Q. You knew he had borrowed during this period to the extent of Rs. 8,000? A. No, not to the amount of Rs. 8,000 because whenever I asked what the amount he had borrowed was and told him we were indebted to the extent of Rs. 5,000 or Rs. 6,000, he said oh, no, nothing like it.

Q. You realised by that time that he had borrowed Rs. 5,000 or Rs. 6,000? A. Yes.

Q. That was in spite of the assistance given by your father in house rent and allowance? No answer.

Q. You knew that when he was acting as Crown Counsel he was getting something like Rs. 500 odd? A. Yes.

30 Q. That was the maximum he ever earned in any one month since you married? A. Yes.

Q. You have sworn that his income exceeded Rs. 750 a month? A. Yes.

Q. You did not give your mind to what you were signing? No answer.

(To Court :

Shown affidavit. This is my signature.

Q. Who prepared this affidavit? A. My Proctor, Mr. Jayawardene.

40 Q. Who gave the Proctor the figure Rs. 750? A. That I do not know.

Q. Did you give him that figure? A. No, I did not,

No. 5
Inquiry re
payment of
Alimony, &c.
pendente lite.
Plaintiff's
evidence
Merle Alles
Cross-
examination.
—continued.

Q. Proctors do not imagine things, they act on instructions. No doubt the language used is the language of the Proctor but you read it over before you signed it? A. Yes.

Q. You have stated this in the affidavit: "And I verily believe that the respondent's average nett income exceeds Rs. 750 per month." Did you give him that figure? A. No, I did not.)

Q. You have also gone further and said that he received substantial moneys from time to time from his mother who is a lady of considerable means? A. His mother gave him whenever he wanted any money.

Q. Did you tell that to the Proctor? A. Yes. I told him that 10 whenever my husband wanted any money he always went to his mother.

I told the Proctor that his mother was a lady of considerable means and whenever he wanted money he used to go to her. I did not tell him about the salary. The affidavit was sworn before Mr. Albert Peris, Superintendent of Police. I know Mr. Peris.

Q. Did he explain this affidavit to you? A. I was in bed when it was signed. He did not read it over to me. I knew what I was signing.

(Shown affidavit). Your husband has sworn to the fact that during the last 3 years his average monthly income inclusive of all salary as Acting Crown Counsel was Rs. 182·86? 20

A. I do not know because he never told me.

Q. You told us he had to maintain a car? A. Yes. He used that car to go to the Courts among other places he went to. The car used to go to Hulftsdorp and take him back. About half the use of that car was in travelling to Hulftsdorp and back. The car used to be sent home sometimes. The average monthly expenditure is not known to me because he used to attend to that himself. I do not know whether it was about Rs. 60.

Q. The car had been bought for him by his father in 1934? A. Yes. During the last 3 years he has not been a member of either the 30 Lawn Club or the Sinhalese Sports Club. The Borella Stores account was closed two or three years ago. It was closed some time after we came to Merlton. In 1938 or 1939 we came to Merlton. I remember going to live at Pamankadde. It was not at that time that the account was closed. We went to live at Pamankadde in 1937.

Q. You are a lady who is fond of pleasure? A. Yes.

Q. You are very fond of pleasure. I mean you spend very little of your time in your house? A. I spend most of my time in my house and I go out in the evenings.

Q. When you go out at night you return very late, not till midnight? 40
A. That is if I go out for a dance.

(To Court :

Q. Did you go out at night with your husband? A. Yes.

Q. You go out to dances with your husband? A. Yes.)

Q. Throughout the period he was at Jaffna you were out almost every night at dances? A. Not at all.

Q. To the Galle Face Hotel? A. Not at all. I used to go once a week and that too with the permission of my husband to the G. O. H.

Q. When he was at Jaffna you were nightly out at dances? A. Not nightly. I go only once a week. I used to write to my husband and get his permission. It is with his full permission that I went.

Q. During the day I put it to you that you either went out or were entertaining people at your house? A. I was always at home during the day unless I went out to do some shopping.

Q. Whenever you were at home were you not entertaining people? A. Not every day of my life, but now and again.

Q. The work of looking after the child was left entirely, to the ayahs? A. Certainly not. When the child was small I did everything and the ayah looked after the child when it was big enough to be looked after by her.

Q. Did you send the child a frock for Christmas? A. Yes.

Q. Do you say, that was sent back? A. That was the only thing my husband accepted.

Q. Your statement was that the rompers were sent back by his brother? A. Yes. It was returned by the brother with thanks and signed by the brother. I do not know who opened the parcel but the letter was signed by his brother.

Q. You have admitted that defendant's mother was a person of considerable means? A. Yes.

I know that the defendant is now living with his mother. I am living with my father now. I propose to continue living there.

REXD.

I produce X3 dated 31-1-42 a letter which I sent to my child. The second child was born on 26th March (letter read). I made those rompers. I produce X4 the envelope in which that letter was sent. It was addressed to "Miss H. Alles c/o S. Alles," that is care of my husband. The letter was kept and the rompers came back with the writing "Herewith five rompers returned." The envelope was sent back. X3 is the copy of the letter I had. X4 was returned to me. The endorsement is not my husband's writing, it is my husband's brother's writing.

My child was born on 26-3-42 and I swore my affidavit on 1-4-42. I was in bed when I signed the affidavit.

I did not frequently go out with my brother who is in the Income Tax Office but I have been to parties with him.

(To Court ;

No. 5
Inquiry re
payment of
Alimony, &c.
pendente lite.
Plaintiff's
evidence.
Merle Alles
Cross-
examination.
—continued.

Plaintiff's
evidence
Merle Alles
Re-examina-
tion.

No. 5
Inquiry re
payment of
Alimony, &c.
pendente lite.
Plaintiff's
evidence,
Merle Alles
Re-examina-
tion.
—continued.

When I am out of the house there are two ayahs to look after the girl and I leave all instructions. There is also the cook and two boys and the gardener. If the child got ill when I was away dancing at the G. O. H. they would telephone to me.

Q. Did you give instructions about such a contingency? A. They always knew where I would be if I was out of the house. I have not been to dances since I went home to my father's house in Kandana.

Sgd. R. F. DIAS,
D. J.

Mr. Gratiaen puts in X1 to X4 and closes his case on this part of the 10 proceedings.

Sgd. R. F. DIAS,
D. J.

MR. WICKREMANAYAKE calls :

Defendant's
evidence,
Stanley Alles
examination.

STANLEY ALLES—Sworn.

I am an Advocate of the Supreme Court. Defendant.

(Shown affidavit). This is my affidavit. I have set out there my income. I have taken these figures from my fee book. I have sent Income Tax returns. In setting out my average income of Rs. 182·86 I have included the fees received by me as Acting Crown Counsel at Jaffna. 20 That is the exact average or gross monthly income for the last 3 years ending 1942, 31st March. I have receipts for the Income Tax paid by me. I am taxed for this year at 1½ per cent. I have as an Advocate to spend money in earning my income. Several items are allowed by the Income Tax Office as deductions, that is money that is normally spent by an advocate in earning his income such as my travelling from my house to the Courts, etc. I had a car. The normal running expenses of that car, petrol came to Rs. 40 to Rs. 45 a month and including the maintenance of the car to Rs. 60 or Rs. 70. With the driver's salary Rs. 100. Half of that would be allowed as spent on earning my income and I claim a 30 deduction of Rs. 50 on this head. I have to pay the Law Library subscription Rs. 30. I buy law reports—the Current Law Reports. I do not have a clerk of my own. I use a clerk with others and give him something a term—Rs. 10 a term. That is Rs. 30 a year. There are also other items such as expenses in respect of my Chambers. I claim a total deduction of Rs. 50.

I was last in the Crown Counsel's Department in August. When I came from Jaffna on the 30th August I was functus. Prior to that I was there from February. In October, 1941, I was given a special fee by the Attorney-General to assist Mr. N. Gunasekere in the appeal connected 40 with the Jaffna Circuit case. That was the only income I had in October. That was Rs. 157·50. Except for that my earnings at the Bar was nothing in November and December. Up to May 25th I have had Rs. 94·50.

My fee book has been regularly kept. I am prepared to pay 1/5th of the Rs. 182.86. I am also prepared to pay any sum which the Court thinks reasonable for the maintenance of the child Joseph Richard during the pendency of the action.

No. 5
Inquiry re
payment of
Alimony, &c.
pendente lite
Defendant's
evidence
Stanley Alles
examination
—continued.

On the question of the custody of the child, I have been living with my mother since the separation. She is a lady of means. She has brought up a fairly large family—two sons are advocates, one a doctor and others. They are all employed. She has a daughter who is married to a Government officer in the Civil List. My mother is fit and well able to look after the child. She is looking after the child since December.

(To Court :

Q. Have you been allowing the mother of the child access to the child? A. There was only that one application in February and she was not allowed on that occasion because I felt that it was too soon for the child to see her.)

I remember the time that the authorities advised people who had nothing particular to do in Colombo to evacuate from Colombo, that was early this year. During that period my mother took the child away on the 14th February to Nuwara Eliya. My mother was living in a boarding house there and she did not come back till the 18th of May this year. My sister went with my mother and remained with her during the whole period. My sister has her own children.

My wife applied to see the child in February. No, it was on the 14th of January.

My child was sent a frock for Christmas and it was accepted. I was not aware that any rompers has been sent, and up to date I did not know that they had been returned.

(Shown X4). This is not the handwriting of my brother C. A. Alles. I cannot say whose writing it is. It is not mine.

30 (To Court :

I had no objection to my wife communicating by letter with my daughter.

Q. Why did you not take steps to see that communications passed without interruption? A. I was not aware of this incident until today about the rompers.)

My child is being properly looked after now.

(To Court :

Q. While you were living with your wife had you any cause for complaint against her as a mother? A. Except that it struck me that she used to leave the feeding of the child to the servants and never attended to it herself.)

40

No. 5
Inquiry re
payment of
Alimony, &c.
pendent lite.
Defendant's
evidence.
Stanley Alles
examination.
—continued.

My wife is very fond of dancing. I am a dancer myself in a small way.

Q. Your wife stated that you had plenty of money and was earning quite a lot after you married? A. I was living in her father's house and she ran the house. After I went to Shady Grove I was allowed to take the rent of the house which was renamed Merlton. There was also an allowance towards the house rent of Shady Grove but not by her father. Her father never gave me an allowance at any time. If my wife asked me for money she used to get it.

My wife was aware that I was borrowing money from time to time and she signed notes on three occasions with me. She read through the 10 note before she signed it and she was aware of the amount of the liability. It is not true that I covered up the amount in the note to prevent her seeing it. I gave her the whole note and asked her to sign it and she knew the amount. She knew throughout the extent of my liability. In December, 1941, my liabilities ran to about Rs. 7,000.

Defendant's
evidence
Stanley Alles
Cross-
examination

XXD.

Q. You agree it is most unsatisfactory that letters sent to your daughter in your mother's house should be returned like this? A. It is most unfortunate.

Q. Most disgraceful? A. It is most unfortunate. 20

Q. Did you approve of it at all? A. I am sorry that it happened.

Q. Do you deny that Mr. Jayawardene himself had asked you to arrange to let the mother have access to the child? A. Certainly not, not beyond the letter. I refused access in January because I thought it was too soon after the incident of the 19th December when I had left the house. Because the parents had quarrelled it was too soon for the child to see the mother.

(To Court :

Q. What had your quarrels with the wife to do with the wife's relations with her daughter? A. I did not want the child to see the 30 mother again so soon after the breach because I felt it would not be in the interests of the child.)

Q. Did you tell the child the cause of the quarrel between the two of you? A. No. So far as I knew the child did not know about the quarrel between us. Till February, 1941, my wife and I were perfectly friendly and we were living happily.

Q. You were a happy couple with a child then 2½? A. Yes.

Q. You never had quarrels then about the way in which the mother treated her daughter of 2 years? A. No.

Q. Did you quarrel with her subsequently about the child? A. I 40 had occasion to tell her that it was no use leaving the servants to feed the child if she was in the house.

Q. As an example did you feed the child yourself? A. Yes, I have been with the child when she was being fed.

(Shown affidavit). I have given details here with regard to my income up to the end of May.

Q. Has anything happened with regard to your employment since the month of May and before the 26th of June? A. Since 19th of June I have been attached to the Information Office, a Government Department.

Q. You have employment there? A. I have been promised employment there. I say so because I was asked to study the work there.

Q. What is the salary you have been promised? A. I have not got a letter of appointment yet. Mr. Vythianathen suggested in a minute that I should be paid Rs. 400.

Q. Have you reason to fear that you would not get that employment? A. One never knows. I can only hope. I was understudying the work up to yesterday and from today I am there although I have not received my letter of appointment. I am awaiting my letter of appointment from today and I do not know what may be done. I have not been paid anything.

Q. Did you not think it was evasive not to tell the Court anything about what has happened in the change of circumstances immediately prior to the swearing of the affidavit? A. I do not think so because I have not received the letter of appointment. I do not know that I am going to get the post as yet. I was not told that I was going to get it. I have ceased to be an understudy and I am still there awaiting my letter. I was not told I would get that letter.

I am living now in Ward Place. I have every comfort there. My mother does not give me my allowance. I never got an allowance from her.

(To Court :

Q. During the months you were earning nothing how did you manage for your drinks and smokes? A. I drink little, and smokes do not come to very much. As I said I was in debt at the time.)

Q. How many gold cigarette cases have you got? A. I have one which I bought with my money in England. The other one was not a gold cigarette case, it is pseudo gold.

I read my wife's affidavit carefully. I know it states that I received substantial sums from my mother.

Q. Why did you not deny that allegation in your affidavit? A. I am positive that I did not get substantial sums of money from my mother. I did occasionally get some money from her sums like Rs. 50 but I never got substantial sums.

I bank with the Mercantile Bank—that was up to February this year. I credit to my account whatever cheques I get and cash which I receive on loans.

No. 5
Inquiry re
payment of
Alimony, &c.
pendentelite.
Defendant's
evidence,
Stanley Alles
Cross-
examination
—continued.

(Mr. Gratiaen produces X5 defendant's bank pass book for 1941).
(This is handed to plaintiff's counsel by defendant's counsel).

(Witness says): I wish to add that there are in this credit amount entered moneys paid by one W. J. Perera, Dr. Sinnatamby and C. Abeyesundere and others. These items were credited to my account because I draw money on race days at the instance of plaintiff's father and give these people money to bet and later they credit my account with those sums. I was allowed to draw up to Rs. 1,000 from the Club as a member. It was done to accommodate plaintiff's father's friends.

Q. Am I to understand that apart from the free house and the house¹⁰ rent you received from your father-in-law you received no money at all for the maintenance of yourself and your wife except the average sum of Rs. 182·86? A. My father-in-law never gave me one cent. I received no other money except that which I received from the Attorney-General (shown bank book). Until we came to live at Merlton I was getting the rent of that house. That came in regularly, Rs. 200 a month. That was up to November, 1938. When Merlton fell vacant we went into that house at the instance of plaintiff's father who had decided to separate from his wife and to come and live with us. He lived with me till November, 1940.

20

Q. Why did you continue to live there after that? A. Because we were living rent free and I could not afford to move.

(To Court :

My matrimonial troubles were of recent date and by then my father-in-law had left.)

Q. Apart from any financial inability to go into a cheaper house there was no reason? A. There was also the difficulty of letting Merlton.

Q. Did you try? A. No.

Q. Did anybody force you to attend meetings of the Turf Club?³⁰

A. No, no one forced me. I went of my own accord.

Q. Although you could not afford to leave the Rs. 200 house? A. But I am not a gambler.

Q. I understand you used to come from Jaffna to attend race meetings? A. That is false, except that I came on Cup Day last year. I had been away for 7 months up to that point of time.

Q. When you owed how much money? A. About Rs. 6,000.

Q. You had to pay for your own train fare? A. I was given a warrant which was deducted later.

(To Court :

40

I am one of the new entrants. If we take a railway warrant we have to pay for it except when we go on duty.)

Q. You maintained your house in accordance with the standard of living you were accustomed to? A. To the best of my ability. I would not undertake to say that I maintained the standard of living of people who earned Rs. 750 a month. It is true I used to give my wife Rs. 175 a month for house expenses. The rental value of the bungalow was Rs. 200. I admit I had a 14-horse power car paying for petrol about Rs. 40 a month. The reason why I had that car was because of the defect in my leg. I had to have a car with leg room.

No. 5
Inquiry re
payment of
Alimony, &c.
pendente lite.
Defendant's
evidence,
Stanley Alles
Cross-
examination.
—continued.

Q. You are now offering your wife 1/5th of Rs. 182·86? A. Yes, 10 of my nett income. I cannot say how much I used to borrow each year. I cannot give an estimate. It is difficult.

Q. Was it Rs. 5,000 a year? A. All throughout my married life it was about Rs. 7,000.

Q. Am I to understand that you swear that no sums went into the bank account except moneys returned by people whom you accommodated on the race course? A. Or moneys I earned and moneys I borrowed.

I go to the Information Office by rickshaw. I am not charged any boarding. (Shown X5). On the 19th of December, 1941, two cheques were sent to my credit for Rs. 400 and Rs. 200. They were both given 20 by my brother. The Rs. 400 had been taken by the plaintiff from her father earlier for the purpose of house expenses for the month and for buying Christmas stores. It was a loan to her. That Rs. 400 I got from my elder brother to be repaid and sent a cheque to Mr. Costa. The Rs. 200 was taken from my brother to pay current bills. The Rs. 400 had been taken by the plaintiff before I left. In November, 1941, Mr. Ludowyke credited Rs. 250. I gave him that money to be credited because he was working in the Fort. That was my own cash. Mr. A. C. Alles on 13-4 did not give me Rs. 400 to be credited, that was money I gave him to be credited to my account.

80 Q. In that month was Rs. 800 credited to your account? A. Those are moneys I borrowed and credited to my account.

Q. In September you put in a voucher for Rs. 148·95? A. That must be some batta due to me. The Rs. 400 credited on 28-8-41 would be cash, credited after I returned from Jaffna. That was also what I borrowed. I had left the department on the 20th and I wanted money and I raised it. The Government cheque for Rs. 351 credited on 27th August would be my salary. Also a voucher for Rs. 240·25 batta. Apart from the Rs. 545 being my salary and voucher for Rs. 240·25 the deposit of Rs. 200 in June was a cheque I got in Jaffna from Mr. Tiruchelvam. 40 He gave me the cheque and wanted it cashed, and I sent the cheque to the bank.

Apart from my salary as Crown Counsel I did get batta but I spent that. That was not included in the income tax because it is a lawful deduction.

No. 5
Inquiry re
payment of
Alimony, &c.
pendente lite.
Defendant's
evidence,
Stanley Alles
Cross-
examination.
—continued.

My elder brother has given me Rs. 5,000. I did not get a cent from my mother last year. In the previous year my mother did not give me anything.

My mother pays the ayah Rs. 7 and food. There is no little boy, there is only the ayah.

Q. Do you agree that if the Court is disposed to give the custody of the child to the plaintiff pending the action Rs. 50 a month, would be about what it would cost to keep the child properly? A. I do not know. I would not undertake to say that is too much.

Defendant's
evidence,
Stanley Alles
Re-
examination

REXD.

10

My batta works out to Rs. 7 a day and I spend over and above that. That includes my subsistence. Rs. 5.50 subsistence and Rs. 1.50 lodging. I am generally out of pocket with regard to the subsistence.

My brother gave me the Rs. 5,000 in February this year. It was after I left my wife. It was given to pay my debts. I have my fee book in Court and I gave evidence by referring to it. I have also my income tax receipts. I am prepared to allow the plaintiff reasonable access to the child at all times.

Sgd. R. F. DIAS,
D. J. 20

Mr. WICKREMANAYAKE closes his case.

In view of the evidence of the defendant Mr. Gratiaen asks for an adjournment under Sec. 614 proviso. Counsel stresses the words "not less than 1/5". The postponement is asked for in order to ascertain the precise position of the defendant in the Information Office. He says the plaintiff has been taken by surprise by defendant's evidence today.

Mr. Wickremanayake objects. Submits an adjournment will increase the costs of the defendant who has to pay for all these proceedings.

ORDER :

I wish to express no opinion either on the merits or whether Mr. Gratiaen's arguments are sound but I think no prejudice will be caused to either side by granting the adjournment asked for under Sec. 623. The matter will be dealt with after any further evidence has been led when the contentions of both sides will be very carefully considered. The costs of today's inquiry will abide the final result.

I refix this inquiry for 21-7. The answer may be filed on that date.

Sgd. R. F. DIAS,
D. J.

As a *modus vivendi* parties agree that until the Court makes its order the plaintiff should be allowed to see Hortense at any reasonable time twice a week at the house of Revd. Father Herat, All Saints, Borella, for a reasonable time.

Sgd. R. F. DIAS,
D. J.

Later

The parties have settled the disputes on this part of the case. Motion filed. Enter interlocutory decree accordingly. Payment to be from party to party direct. Answer 21-7. Any documents put in must be stamped.

Sgd. R. F. DIAS,
D. J.

No. 6.

Terms of Settlement re Alimony, &c. pendente lite.

It is agreed without prejudice to the plaintiff's right to permanent alimony and custody of the children as prayed for in the plaint :

1. That alimony *pendente lite* be fixed at Rs. 60 per month and maintenance of the child Joseph Richard at Rs. 25 per month commencing 31st July, 1942.
- 20 2. The defendant to have the custody of the child Hortense pending a final decision in this case the plaintiff to be entitled to see the child at Mrs. Allan Ratnam's bungalow or any other place agreed upon between the parties on any the plaintiff's pleases and for any length of time.
3. The costs to be prepaid by the defendant is fixed at Rs. 200. The plaintiff undertakes to make no further application for costs.

Sgd. MERLE ALLES,
Plaintiff.

Witness to the identity and signature
of the plaintiff.

30 Sgd. C. E. JAYAWARDENE,
Proctor, S. C.

Sgd. STANISLAUS ALLES,
Defendant.

Sgd. H. A. ABEYWARDENE,

Witness to the signature and identity
of the defendant.

Sgd. W. M. SELLAYAH,
Proctor, S. C.

1st July, 1942.

No. 5
Inquiry re
payment of
Alimony, &c.
pendente lite.
Defendant's
evidence
Stanley Alles
Re-
examination.
—continued.

No. 6
Terms of
Settlement
re Alimony
&c. pendente
lite.
1-7-42.

No. 7
Interlocu-
tory Decree
of the
District
Court.
1-7-42.

No. 7.

Interlocutory Decree of the District Court.

INTERLOCUTORY DECREE :

This action coming on for disposal before Dr. R. F. Dias, District Judge, Colombo, on the 1st day of July, 1942, in the presence of the Proctor on the part of the plaintiff and of the proctor on the part of the defendant.

It is ordered and decreed of consent that the defendant do pay to the plaintiff Rs. 60 per mensem as alimony *pendente lite* and a sum of Rs. 25 per mensem as maintenance of the child Joseph Richard commenc-¹⁰ing 31st July, 1942.

It is further ordered and decreed that the defendant do have the custody of the child Hortense pending a final decision in this case, the plaintiff be and she is entitled to see the child at Mrs. Allan Raṭnam's bungalow or any other place agreed upon between the parties on any day the plaintiff pleases and for any length of time.

It is further ordered and decreed that the defendant do pay to the plaintiff Rs. 200 as costs of contest to be prepaid by the defendant. Plaintiff not to make any further application for costs.

It is further ordered and decreed that the amounts decreed be paid²⁰ direct by party to party.

Sgd. R. F. DIAS,
District Judge.

The 1st day of July, 1942.

 No. 8.

No. 8
Answer of
the Defen-
dant.
21-7-42.

Answer of the Defendant.

THE ANSWER OF THE DEFENDANT (S. ALLES).

On this 21st day of July, 1942.

1. The defendant admits the averments in paragraph 1 of the plaint.
2. Answering to paragraphs 2 and 3 the defendant admits such of³⁰ the averments therein contained as are not hereinafter expressly denied.
3. Answering to paragraph 3 the defendant, whilst admitting that he left the plaintiff on or about 19th December, 1941, denies all and singular the other averments therein contained.
4. The defendant denies the averments contained in paragraph 5 of the plaint.
5. Further answering the defendant states that the plaintiff committed adultery with one Dr. T. S. M. Samahin presently of Dambulla on

several occasions between 15th February, 1941, and 20th March, 1941, and again between 20th April, 1941 and 20th August, 1941, at the defendant's house "Merlton", Gregory's Road, Colombo, whilst the defendant was away in Jaffna on official duty.

No. 8
Answer of
the Defen-
dant.
21-7-42.—
continued.

6. The defendant states further that between 20th March, 1941, and 20th April, 1941, the plaintiff on several occasions committed adultery with the said Dr. Samahin at Bandarawela.

7. The defendant specifically denies that the boy Joseph Richard referred to in paragraph 2 of the plaint is a son of the defendant. Whilst admitting that the said child was born to the plaintiff during the continuance of her marriage with the defendant, the defendant states that he had no access to the plaintiff at any time when the said child Joseph Richard could have been begotten.

8. A cause of action has thus accrued to the defendant to sue the plaintiff for a divorce *a vinculo matrimonii* and to sue the said Dr. Samahin for the recovery of the damages sustained by the defendant by reason of the adultery hereinbefore set out. The defendant assesses the said damages in the sum of Rs. 25,000.

Wherefore the defendant prays :

- 20 (a) That the plaintiff's action be dismissed ;
 (b) For judgment against the plaintiff (i.) granting to the defendant a divorce *a vinculo matrimonii* ; (ii.) granting to the defendant the custody of the child Pauline Frances Hortense ;
 (c) For judgment against the said Dr. Samahin in the sum of Rs. 25,000 as damages with legal interest thereon from date of decree till payment in full ;
 (d) For the costs of this action ; and
 (e) For such other and further relief as to this Court shall seem meet.

Sgd. H. A. ABEYWARDENE,
Proctor for Defendant.

30

No. 9.

Answer of the Added-Defendant.

No. 9
Answer of
the added-
Defendant.
28-8-42

THE ANSWER OF THE ADDED-DEFENDANT

(to the allegations against him in the answer of the defendant.)

On this 28th day of August, 1942.

1. This defendant denies all and singular the allegations against him contained in the answer of the defendant and specifically denies that he committed adultery with the plaintiff at either of the places or between any of the dates set out in paragraph 5 or in paragraph 6 of the defendant's
 40 answer.

No. 9
Answer of
the added-
Defendant.
28-8-42.—
continued.

2. This defendant further states that he has at no time committed adultery with the plaintiff.

3. This defendant denies that any cause of action has accrued against him in favour of the defendant, as averred in paragraph 8 of the defendant's answer. This defendant further denies that he is liable to the defendant in the sum of Rs. 25,000 claimed against him, or in any other sum whatever.

Wherefore this defendant prays :

That the defendant's claim against this defendant be dismissed with costs payable by the defendant and that this defendant be granted such ¹⁰ other or further relief in the premises, though not herein specially prayed for, as to this Court shall seem fit.

Sgd. L. B. & L. M. FERNANDO,
Proctors for Added-Defendant.

No. 10.

Plaintiff's Interrogatories.

No. 10
Plaintiff's
Interrogatories
1-9-42.

We move for leave of Court to serve the following Interrogatories on the defendant to be answered by him by affidavit within ten days of service hereof :—

1. On what dates and at what times between 15th February, 1941, ²⁰ and 20th March, 1941, and between 20th April, 1941, and 20th August, 1941, do you state that the plaintiff committed adultery with Dr. Samahin as stated in paragraph 5 of the answer.

2. On what dates and at what times between 20th March, 1941, and 20th April, 1941, and where in Bandarawela do you state that the plaintiff committed adultery with Dr. Samahin as stated in paragraph 6 of the answer.

3. Were you in Colombo on 9th August, 1941 ?

4. If so did you stay the night of the 9th August at Merlton, Gregory's Road, Colombo.

30

Sgd. MERRILL PEREIRA & GUNESKERE,
Proctors for Plaintiff.

Colombo, 1st September, 1942.

No. 11.

Replication of the Plaintiff.

No. 11
Replication
of the
Plaintiff
3-9-42.

THE REPLICATION OF THE PLAINTIFF.

On this 3rd day of September, 1942.

1. The plaintiff joins issue with the defendant upon the denials contained in the answer.

2. Answering to paragraphs 5 and 6 of the answer the plaintiff denies that she committed adultery with Dr. Samahin between the dates and at the places specified therein or at any other date or place.

10 3. Answering to paragraph 7 the plaintiff specially avers that the said child Joseph Richard is the child of the defendant and states that the defendant had opportunity of access and did in fact have access to the plaintiff at or about the time the said Joseph Richard was conceived.

4. Answering to paragraph 8 the plaintiff denies that a cause of action has accrued to the defendant to sue the plaintiff for a divorce *a vinculo matrimonii*.

5. By way of further replication the plaintiff pleads that the allegations contained in paragraphs 5, 6, and 7 of the answer are false to the knowledge of the defendant and that the said allegations have been mali-
20 ciously made by the defendant.

The said malicious conduct of the defendant is an additional ground for granting the plaintiff the separation prayed for in the plaint.

Wherefore the plaintiff prays :

(a) That the defendant's claim in reconvention be dismissed with costs.

(b) That judgment be entered for plaintiff in terms of the prayer of the plaint.

(c) For such other and further relief as to this Court may seem meet.

Sgd. MERRILL PEREIRA & GUNASEKERA,
Proctors for Plaintiff.

80

No. 12.

Plaintiff's Motion to Discover 1st Defendant's Documents.

No. 12
Plaintiff's
motion to
discover
1st Defen-
dant's
documents
4-9-42.

We move under section 102 of the Civil Procedure Code for an order on the 1st defendant to declare by affidavit all the documents which are or have been in his possession or power relating to this action and for a date to serve the said order on the 1st defendant.

Sgd. MERRILL PEREIRA & GUNASEKERA,
Colombo, 4th September, 1942. *Proctors for Plaintiff.*

No. 13
1st Defendant's
motion to
have a
Blood-test.
30-9-42.

No. 13.

1st Defendant's Motion to have a Blood-Test.

As the paternity of the child Joseph Richard is in dispute in this case and as a blood-grouping test will be of assistance to the Court in deciding the question of paternity I move that the Court may be pleased to issue a Commission to Dr. N. Sinnadurai, M.D.B.S. (Lond.), Judicial Medical Officer, Colombo, and Dr. G. S. W. de Saram, M.B.B.S. (Lond.), Pathologist, General Hospital, Colombo, to examine specimens of the blood of—

- (a) the plaintiff,
- (b) the 1st defendant,
- (c) the 2nd defendant, and
- (d) the child Joseph Richard,

10

and ascertain into what blood-group they fall.

Colombo, 30th September, 1942. Sgd. H. A. ABEYEWARDENE,
Proctor for 1st Defendant.

Received notice for 9th October, 1942,
we have cause to show.

Sgd. MERRILL PEREIRA & GUNASEKERA,
Proctors for Plaintiff.

20

Received notice for 16th October, 1942,
we have cause to show.

Sgd. L. B. & L. N. FERNANDO,
Proctors for 2nd Defendant.

No. 14
Defendant's
Answer to
Interrogatories.
1-10-42.

No. 14.

Defendant's Answer to Interrogatories.

I, Joseph Stanislaus Alles of Colombo do hereby make oath and say as follows :—

- (1) I am the defendant abovenamed.
- (2) I object to answering the interrogatories served on me.

30

I am advised that they are not interrogatories which I am in law obliged to answer.

Signed and sworn to at Colombo on this
1st day of October, 1942.

Sgd. STANISLAUS ALLES.

Before me :

Sgd. E. R. DE SILVA,
J. P.

No. 15.**Defendant's Affidavit *re* Discovery of Documents.**

No. 15
Defendant's
Affidavit *re*
discovery of
documents.
1-10-42.

I, Joseph Stanislaus Alles of Colombo do hereby make oath and say as follows :—

1. I am the 1st defendant abovenamed.
2. The documents in my possession or power relating to any matter in question in the above action are :
 - (a) Certified copies of extracts from certain public documents which extracts relate solely to my case and do not in any way affect or touch
10 the case of the plaintiff.
 - (b) Letters from the plaintiff including a letter dated 22nd December, 1941.
 - (c) All the said documents with the exception of the said letter dated 22nd December, 1941, I object to the production or inspection on the ground that they relate solely to my case.

Sgd. STANISLAUS ALLES,

Signed and sworn to at Colombo on this
1st day of October, 1942.

Before me :

Sgd. E. R. DE SILVA,
J. P.

20

No. 16.**Plaintiff's Motion to Inspect 1st Defendant's Documents**

No. 16
Plaintiff's
motion to
inspect 1st
Defendant's
documents.
6-10-42.

We move under section 104 of the Civil Procedure Code for an order of Court for notice to issue on the 1st defendant to produce for the inspection of the plaintiff's Proctor all the documents to which reference is made in the 1st defendant's pleadings or affidavits and to permit the plaintiff's Proctor to take copies thereof.

We further move for a returnable date for the said notice and that
30 the said notice be served on the 1st defendant's Proctor Mr. H. A. Abeywardene.

Sgd. MERRILL PEREIRA & GUNASEKERA,
Proctors for Plaintiff.

Colombo, 6th October, 1942.

No. 17
Plaintiff's
motion for
an Order of
Court on 1st
Defendant
to admit
genuineness
of document.
6-10-42.

No. 17.

Plaintiff's Motion for an Order of Court on 1st Defendant to Admit Genuineness of Document.

We move under section 101 of the Civil Procedure Code for an order of Court on the 1st defendant to admit the genuineness of the letter dated 19th December, 1941, and the envelope enclosing same, written by the 1st defendant to the plaintiff and that such notice be complied with within four days after service.

We move further that the notice be served on the 1st defendant's Proctor. 10

Sgd. MERRILL PEREIRA & GUNASEKERA,
Colombo, 6th October, 1942. *Proctors for Plaintiff.*

No. 18.

No. 18
Inquiry re
holding of a
blood-test.
16-10-42.

Inquiry re holding of a Blood-Test.

16th October, 1942.

ADV. MR. E. B. WICKREMANAYAKE for the plaintiff.

ADV. MR. E. G. WICKREMANAYAKE for the 1st defendant.

ADV. MR. J. E. M. OBEYESEKERE for the 2nd defendant.

There are three matters before the Court today. There is an application by the 1st defendant (husband) for a commission to issue to take a ²⁰ blood-test of the child and the parties to the action in order to discover who is the father of the child.

Mr. E. G. Wickremanayake in support of the application says he concedes that there is no power for the Court to order anybody to supply blood. Mr. Wickremanayake says if the parties are willing the application can be allowed. If they are not willing the Court will record it.

I point out that there is an unfortunate child to consider. Mr. E. G. Wickremanayake admits that the Court has no power to compel.

I ask whether the child should not be represented in this case by a next friend or guardian. 80

Mr. E. B. Wickremanayake for the plaintiff does not agree. He says the reasons are (1) in view of the age of the child the blood-test will not serve any useful purpose. Cites Taylor 9th Edition. (2) He should like to be satisfied that the doctors who conduct the test must be doctors who will not make a mistake. It should be done in the presence of the parties on both sides. He prefers to have the matter decided by a Court on the evidence and not on the opinion of medical men.

Mr. Obeyesekere submits the Court has no jurisdiction to issue the commission asked for.

Mr. E. G. Wickremanayake proceeds with his argument. He says ⁴⁰ if the parties are willing the Court has power to issue a commission. If he says the parties are not willing he will drop his application.

Mr. E. B. Wickremanayake says he is not willing.

Mr. E. G. Wickremanayake submits the Court should issue the commission and leave it to the parties to object.

Mr. Obeyesekere asks for costs.

In view of the objection raised by plaintiff, Mr. E. G. Wickremanayake does not press his application but he submits he should not be cast in costs.

I wish to hear Mr. Obeyesekere in regard to costs. Counsel reads application. The motion is not an application for a commission. It is an application to issue a commission to do a certain thing and form a
 10 certain opinion. Counsel reads sec. 420. He says it does not fall even under section 422. Submits there is no provision for making this application. Application should not have been made. Costs must follow the event.

ORDER :

Mr. E. G. Wickremanayake in view of the objection of the plaintiff to having her blood examined withdraws the application because the whole efficacy of the blood-grouping test in this case would depend on the blood of the four persons concerned being examined. If one of them cannot be examined I think the test would be useless. The only question therefore
 20 is whether the first defendant should be ordered to pay the costs of the plaintiff and the second defendant. I think the first defendant's application was made *bona fide*. Undoubtedly unless there is some provision corresponding to section 73 of the Evidence Ordinance or to section 149 of the Criminal Procedure Code, Chapter 16, this Court would have no power to order the plaintiff, the 2nd defendant and certainly the child whose paternity appears to be in dispute to supply evidence by giving blood. But nevertheless it appears now to be an established fact that identity and paternity can be established by what is known as the blood-grouping test and therefore the first defendant made the application so
 30 that relevant evidence would be available to this Court at the trial. Mr. E. G. Wickremanayake candidly admits that unless the parties consent the Court cannot grant this application. I would go further. I would hold that unless the child was represented before me by a guardian *ad litem* this Court would have no jurisdiction at all to permit what is a technical assault, even though it be the prick of a hypodermic needle, to be committed on the person of the child in order that its blood may be supplied for purposes of examination. Therefore I think in this case costs must follow the event and while I dismiss the first defendant's application I am bound to order that he should pay the costs of the plaintiff and
 40 second defendant. I might venture to suggest that in view of the importance of this class of evidence the legislature might consider an amendment of the law on the lines of the sections which I have cited. This evidence may become important not only in divorce cases but in other cases.

Sgd. R. F. DIAS,
 D. J.

No. 18
 Inquiry
 re holding of
 a blood-test.
 16-10-42.—
continued.

No. 19.

No. 19
Order
relating to
Answering of
Interrogatories.
23-10-42.

Order relating to Answering of Interrogatories.

I now proceed to hear Mr. E. B. Wickremanayake's application under section 100 of the Civil Procedure Code.

Mr. Wickremanayake divides the interrogatories into two groups. In the answer the 1st defendant has claimed a divorce on the ground that plaintiff has committed adultery with the 2nd defendant on the date specified in paragraph 10 of the answer. 1st defendant's charges against the plaintiff falls into two parts adultery between 15-2-41 and 20-3-41 and 20th April, 1941 and 20th August, 1941, at Colombo in the first defendant's¹⁰ house and thirdly at Bandarawela between the 20-3-41 and 20-4-41. Mr. Wickremanayake says to meet these charges the plaintiff must have particulars of the time and place. 1st defendant must be having his evidence now and he must know what he is going to prove. Plaintiff is entitled to know what the allegations are and to what particular dates approximately the 1st defendant's evidence is aimed at. Cites (1902) 71 L. J. P. 78, 4 N. L. R. 106. Submits it is unreasonable to expect plaintiff to account for her movements during these terminal dates. Plaintiff wants to know the date and the place. For example, where at Bandarawela?

Paragraphs 3 and 4 of the interrogatories refer to the paternity of²⁰ the child which has been raised in question by the 1st defendant. Interrogatories 3 and 4 bear on the question of access.

Mr. E. G. Wickremanayake interposes that if it is recorded as being the case of the plaintiff that 1st defendant was in Colombo on the 9th August, 1941, and that he stayed the night of the 9th August at "Merlton" and that the child was conceived on that day 1st defendant is prepared to answer the interrogatories.

Mr. E. B. Wickremanayake states that he does not wish to bind his client to any statement but that on his instructions at present that is his client's case but he submits that in any event the 1st defendant must³⁰ answer interrogatories 3 and 4. With regard to interrogatory 3 he says the 1st defendant has already given evidence that he was in Colombo on 9-8-41. Submits interrogatory 4 is relevant on the question of access or no access. No reason why defendant should refuse to answer. It is not a fishing enquiry. Refers to "other like ground". Those words must be *ciusdem generis* with what is previous. Plaintiff is not trying to ascertain the evidence. Cites (1881) 20 Chancery Division 519, (1886) 17 Q. B. D. 154.

Counsel proceeds to deal with the 3rd point namely the inspection of documents. There are two applications; application to inspect by the⁴⁰ plaintiff, and application to admit the genuineness of the letter dated 19-12-41.

With regard to the latter, Mr. E. G. Wickremanayake admits the genuineness of the letter dated 19-12-41.

Mr. E. B. Wickremanayake does not want certified copies of the public documents. Mr. E. B. Wickremanayake wants inspection of all letters written by plaintiff to 1st defendant. These are matters relevant to the case both of the plaintiff and 1st defendant. (1882) 10 Q. B. D. 191 at page 201. Submits on this authority these letters are relevant to both cases and therefore the Court is not bound by the 1st defendant's affidavit. Odgers 7th Edition, page 264. Cites section 106. Counsel asks for an order for inspection of these letters.

No. 19
Order
relating to
Answering of
Interrogatories.
23-10-42.—
continued.

Mr. E. G. Wickremanayake : This is an attempt at fishing for evidence
10 by means of interrogatories. Actual act of adultery cannot be proved. All that a party can do is to place certain facts before the Court and ask the Court to draw certain inferences. Plaintiff has no direct knowledge. Submits 1st defendant cannot further particularize without disclosing the evidence. Distinguishes (1902) 71 L. J. P. 78. One continuous period involved at a certain place.

In this case 1st defendant has given fuller particulars. Submits the attempt now made is to ascertain the 1st defendant's evidence. 1st defendant's case is that during these periods the 2nd defendant was in the house with plaintiff practically every night. 1st defendant can't say more
20 without giving his evidence away. If the Court orders interrogatories to be answered 1st defendant will have to specify every single day during this period. Even in a criminal case the prosecutor may be allowed to specify in his charge terminal dates like this. Mr. Wickremanayake accepts the law laid down in 4 N. L. R. 106. Submits 1st defendant cannot give any more details than this and cannot be compelled to give further details. Note that to the answer 1st defendant has filed a replication. He has not asked that the answer should be amended before he could file a replication.

Interrogatory 3 does not arise now. Mr. Wickremanayake says at
30 the date interrogatories were submitted 1st defendant had already given evidence in the alimony enquiry and disclosed the evidence. Submits this reacts on the *bona fides* of the interrogatories.

Interrogatory 4. Submits there is a danger in answering interrogatories 3 and 4. There is a danger of the other side shaping their evidence on the answers. Note learned Counsel's statement that his instructions at present are so and so. Court will not allow the other side such an indulgence to shape its case. The Court must draw a distinction as regards materiality and relevancy. A matter may be relevant and yet not material at a stage, *e.g.* matter of damages. Question of damages was relevant
40 but it was not material at the stage interrogatories were put. Plaintiff's case is purely malicious desertion. Adultery is the 1st defendant's case. The question of paternity is therefore relevant to the 1st defendant's case and not to plaintiff's case. Interrogatories 3 and 4 do not help to cut short plaintiff's case in regard to malicious desertion. 1st defendant makes no allegation that any misconduct took place on 9-8-41 particularly. If the plaintiff has fixed the date of conception of the child and wants an admission from the 1st defendant that would be in order. Submits issue 4

No. 19
Order
relating to
Answering of
Interrogatories.
23-10-42.—
continued.

is clear fishing interrogatory. Until the plaintiff has fixed herself to a particular date for her conception 1st defendant is not bound to answer interrogatory 4. There is a danger of the plaintiff shaping her case to meet the situation created by the answer.

Inspection of documents. The matter has now been confined to the letters written by plaintiff to 1st defendant. Mr. Wickremanayake says this throws doubts on the *bona fides* of the plaintiff in view of the wide manner in which discovery was sought for. Now abandoned. Mr. Wickremanayake refers to para. (c) of the affidavit. He says it relates solely to his case. Asks how can the plaintiff's letters to the 1st defendant prove her case for malicious desertion. Submits a party is the judge at the present stage as to whether the documents relate solely to his own case. All that 10 Q. B. D. 201 decides is that in spite of defendant's affidavit the documents will assist the case of the other side. Section 109 of the Civil Procedure Code. Submits that the 1st defendant has satisfied the Court that these documents relate only to his own title. Submits that the party is the judge unless he tries to put the document in evidence. Submits 10 Q. B. D. 201 must be read subject to the last para. of section 104 of the Civil Procedure Code. Submits on the face of the affidavit the Court cannot under section 104 order inspection. There is nothing in the answer to show any erroneous misrepresentation of truth. The Court must trust the objector unless there is something in the matter placed before the Court which cause the Court to doubt the party objecting. (1881) 20 Chancery 519 at 530.

Sgd. R. F. DIAS,
D. J.

Luncheon interval.

Sgd. R. F. DIAS,
D. J.

MR. WICKREMANAYAKE continues his address :

80

Counsel distinguishes 4 C. W. R. 61 from the facts of this case. Sec. 104 does not apply to the facts in 4 C. W. R. 61.

Cites 7 C. W. R. at 23 ; 4 Leader Rep. 81. Submits no material before the Court to enable the Court to hold that the affidavit of the 1st defendant is bad.

Cites 2 Vesey's Rep. 679 ; 7 Ch. Appeals 95 at 96 ; 11 Ch. D. 95 ; 22 N. L. R. 87.

No list of documents or witnesses filed yet.

MR. E. B. WICKREMANAYAKE in reply :

Submits plaintiff's interrogatories are not fishing interrogatories. Plaintiff does not want the evidence relied on by the 1st defendant, she wants to know the dates on which the adultery was committed and the places. In the replication the plaintiff denies defendant's claim in re-convention. Plaintiff's letters are material on the issue of adultery. Cites 1920 I. K. B. 659.

Sgd. R. F. DIAS,
D. J.

C. A. V.

ORDER :

No. 19
Order
relating to
Answering of
Interrogatories.
23-10-42.—
continued.

Two questions arise for decision : (a) the application of the plaintiff for an order on the 1st defendant for further and better answers to her interrogatories, and (b) her application that the 1st defendant should be directed to give her inspection of the letters written by her to the plaintiff.

The plaintiff asks for a divorce from the 1st defendant on the ground that he maliciously deserted her on 19-12-41. The 1st defendant counter-claims naming the 2nd defendant as co-respondent and asks for a divorce on the ground that the plaintiff and the co-respondent misconducted themselves on several occasions between 15-2-41 and 20-3-41 and again between 20-4-41 and 20-8-41 at the 1st defendant's house at Colombo while he was away at Jaffna on official duty. It is further alleged that misconduct took place at Bandarawela between 20-3-41 and 20-4-41. The 1st defendant further alleges that he is not the father of the child Joseph Richard born to the plaintiff on the ground that, although the child was born during the continuance of plaintiff's marriage with the 1st defendant, he had no access to her at any time when the said child could have been begotten. The plaintiff has filed replication denying the charges of adultery and asserting that the 1st defendant had opportunity of access to her
20 at the time the child was conceived.

Thereupon the plaintiff administered the four interrogatories to the 1st defendant asking for particulars regarding the dates and times of the alleged misconduct. Interrogatory 3 is no longer in question between the parties and can be disregarded. Interrogatory 4 comes to this—It being admitted that the 1st defendant was in Colombo on 9-8-41, he is asked to state whether he stayed the night at Merlton, Gregory's Road ?

To this the 1st defendant replied ; he says he objects to answer these interrogatories because he is advised that they are questions which by law he is not obliged to answer.

80 The object of administering interrogatories is two-fold ; first to obtain admissions to facilitate proof of the case of the party administering them, and secondly to ascertain so far as one lawfully may, the case of the opponent's—Odgers' Pleading and Practice, p. 276. There are certain limitations, however, to this right and one of them is that, while a party may interrogate in regard to the facts on which the other side intends to rely, she may not interrogate in order to discover the evidence by which the opponent proposes to prove those facts—see (1907) 2. K. B. 626, 629. She cannot in effect claim to see her opponent's brief, or ask him to name his witnesses—(1911) 2 K. B. 725.

40 Divorce cases form no exception to this rule. In Divorce actions it is the rule that particulars of any adultery must be stated in the pleading, specifying the time and place of each act—Annual Practice (1942) p. 350 where the case law is set out. The case reported in 4 N. L. R. 106 was decided on the same principle. "The Court will require of him who makes a charge that he shall state that charge with as much definiteness and

No. 19
Order
relating to
Answering of
Interrogato-
ries.
23-10-42.—
continued.

particularity as may be done, both as regards time and place"—(1893) Probate 146. A great many cases have been cited, but I do not think it is necessary to refer to all of them. The 1st defendant is making a charge against the plaintiff, who I think is entitled to be told, without the 1st defendant disclosing the evidence by which he hopes to prove those charges—the dates and places of each act of misconduct. I do not think in law the 1st defendant has any right to refuse to answer subject to that limitation. He must answer to the best of his ability, and I direct him to do so. That is to say—with regard to interrogatory 1 he must disclose, without disclosing the evidence, the number of times between the various terminal 10 dates alleged, the plaintiff and the 2nd defendant are alleged to have misconducted themselves at the 1st defendant's house at Colombo. With regard to interrogatory 2 he must similarly state the number of times, the dates, and the places at Bandarawela where he alleges the plaintiff and the 2nd defendant misconducted themselves between the two terminal dates. In regard to interrogatory 4 I can see no lawful reason why the 1st defendant should not be called upon to state where he spent the night of 9-8-41. "The old system of pleading at Common Law was to conceal as much as possible what was going to be proved at the trial"—L. J. 38 Ch. D. 414. Odgers says (p. 178) "Now we play with the cards on the 20 table".

With regard to the second question, the matter has been narrowed down to an application by the plaintiff to inspect the letters written by her to the 1st defendant. By his affidavit the plaintiff has objected to produce them, except one, on the ground that they relate solely to his case. It is argued that because they are letters written by the plaintiff, they must therefore also be relevant to her case as well. I do not think that inference necessarily follows. A person may write a letter to the opposite party and the letter may yet have no relevance to the case of the person seeking inspection. 30

The application for inspection is made under sec. 104. In 17 N. L. R. 104 it was laid down that a party need not produce documents relating solely to his case; but when a document contains matter which supports the case of the other side, or impeaches the claim of the party required to produce it, it is not protected from disclosure. How is a judge at this stage of the proceedings to decide whether these documents support the case of the plaintiff or impeach the case of the 1st defendant, or whether they relate solely to the case set up by the 1st defendant? Counsel for the 1st defendant therefore argues that at this stage of the proceedings it is the party himself who is the judge, and that the penalty for a wrongful 40 non-disclosure is to be found in the second paragraph of sec. 104—see also 7 C. W. R. 23. I am unable to agree entirely with the submission of counsel. I think he is right up to a point, but the rule is also subject to the observation of Brett L. J. in (1882) 10 Q. B. D. at p. 202: "It is not sufficient for the affidavit to state that the documents form part of the defendant's title or case, but it must go on to state that they do not form or support in any way the plaintiff's title or the plaintiff's case". If the

1st defendant is able to swear such an affidavit, then I think the Court must stay its hand at this stage, and refuse inspection. No such affidavit has been filed. I therefore hold that inspection must be allowed, unless the 1st defendant within one week from today is able to tender an affidavit on the lines which I have indicated above, *i.e.* that the documents in question do not form or support in any way the case set up by the plaintiff, and that they do not in any way impeach the case presented by the 1st defendant.

No. 19
Order
relating to
Answering of
Interrogato-
ries.
23-10-42.—
continued.

Success divided. No costs.

10 Call case on 30-10-42 for the further answer of 1st defendant to the interrogatories and for inspection. Inspection however will be refused if on that day the 1st defendant tenders an affidavit as indicated in this order.

Sgd. R. F. DIAS,
District Judge.

Pronounced in the presence of the proctors for the parties in open Court.

Sgd. R. F. DIAS,
District Judge.

23-10-1942.

20 **No. 20.**

1st Defendant's Motion to Discover Plaintiff's Documents.

I move under section 102 of the Civil Procedure Code for an order on the plaintiff to declare by affidavit all the documents which are or have been in her possession or power relating to this action and further move for a date to serve the said order on the plaintiff.

No. 20
1st Defen-
dant's
motion to
discover
Plaintiff's
documents.
27-10-42.

Sgd. H. A. ABEYEWARDENE,

Colombo, 27th October, 1942.

Proctor for 1st Defendant.

No. 21.

Defendant's further Affidavit *re* Discovery of Documents.

30 I, Joseph Stanislaus Alles, of Colombo, make oath and say as follows :—

No. 21
Defendant's
further
affidavit *re*
discovery of
documents.
29-10-42

1. I am the 1st defendant abovenamed.

2. With reference to the application made by the plaintiff to inspect letters written by her to me, I state that the documents in question do not form or support in any way the case set up by the plaintiff and they do not in any way impeach the case presented by me.

Sgd. STANISLAUS ALLES,

Signed and sworn to at Colombo on
this 29th day of October, 1942.

40 Before me :

Sgd. E. R. DE SILVA,
J. P.

No. 22
Defendant's
further
Answer to
Interrogato-
ries
29-10-42

No. 22.

Defendant's further Answer to Interrogatories.

I, Joseph Stanislaus Alles, of Colombo, make oath and say as follows :—

1. I am the 1st defendant abovenamed.

2. In answer to interrogatory 1, I state that the plaintiff committed adultery with the 2nd defendant at Merlton, Gregory's Road, Colombo, between the 15th February, 1941 and the 20th March, 1941, and again between the 20th April, 1941, and the 20th August, 1941, about three or four times every week. 10

3. In answer to interrogatory 2, I state that the plaintiff committed adultery with the 2nd defendant at Bandarawela between the 10th April, and the 14th April, 1941, at the boarding house run by Mr. Outschoorn by day and during the same period at night at places which I am unable to specify. The said parties again committed adultery on the night of the 18th April, 1941, at Bandarawela at a place I cannot now specify.

4. The answer to interrogatory 4 is in the affirmative.

Sgd. STANISLAUS ALLES,

Signed and sworn to at Colombo on
this 29th day of October, 1942. 20

Before me :

Sgd. E. R. DE SILVA,
J. P.

No. 23.

No. 23
Further
Order
relating to
Interroga-
tories
30-10-42—

Further Order relating to Interrogatories.

30th October, 1942.

MR. ABEYWARDENE for the 1st defendant.

MR. JAYAWARDENE for the plaintiff.

Vide my last order Mr. Abeywardene for the 1st defendant files affidavit in which the 1st defendant swears that "The documents in ³⁰ question do not form or support in any way the case set up by the plaintiff and they do not in any way impeach the case presented by me".

Mr. Jayawardene says the affidavit does not comply with my order.

I read my order. What I held was that the 1st defendant's affidavit must state the documents do not form or support in any way the case set up by the plaintiff and that they do not in any way impeach the case presented by the 1st defendant. I think the affidavit is in order and therefore inspection can be withheld,

Mr. Abeywardene also files affidavit in which he answers the interrogatories as directed by the last order of Court.

Mr. Jayawardene says these answers are insufficient.

Mr. Abeywardene says that they are the best answers he can give.

I think the interrogatories so far as they go comply with my order and I refuse to make any further order. The rest can be argued at the trial.

Mr. Jayewardene wants me to record that under section 109 he moves that 1st defendant's cross claim be dismissed.

10 I refuse to make such an order.

Sgd. R. F. DIAS,
D. J.

With regard to the application by the 1st defendant to inspect the plaintiff's documents, Mr. Jayawardene wants 10 days' time. Time allowed till 9th November.

Sgd. R. F. DIAS,
D. J.

No. 24.

Plaintiff's Affidavit re Discovery of Documents.

20 I, Merle Alles presently of Mutwal, Colombo, do make oath and state as follows :—

1. I am the plaintiff abovenamed.
2. The documents in my possession or power relating to any matter or question in the above action are :—
 - (a) Letter from 1st defendant to me dated 19th December, 1941.
 - (b) Copy of a letter from me to the 1st defendant dated 22nd December, 1941.
 - (c) Letters from the 1st defendant to me.
 - (d) Certified copies of extracts from certain public and other documents.

30 3. I object to the production or inspection of the letters denoted in paragraph 2 (c) and (d) above on the ground that they relate solely to my case and do not form or support in any way the case set up by the 1st defendant and they do not in any way impeach the case presented by me.

The foregoing affidavit having been duly read over by the deponent abovenamed and she appearing to understand the same was signed and sworn to at Colombo on this 9th day of November, 1942.

Sgd. MERLE ALLES.

Before me :
Sgd. L. A. JAYASEKERA,
C.O.

No. 23
Further
Order
relating to
Interroga-
tories.
30-10-42.—
continued.

No. 24
Plaintiff's
Affidavit re
Discovery of
Documents
9-11-42.

No. 25
1st Defendant's
further
Motion
to Discover
Plaintiff's
Documents
20-11-42.

No. 25.

1st Defendant's further Motion to Discover Plaintiff's Documents.

The affidavit filed by the plaintiff on 9th November, 1942, discovering the documents in her power or possession being insufficient in that it does not give a full discovery or any means of identifying the documents referred to in paragraphs 2 (c) and (d), I move that the Court be pleased to direct the plaintiff to grant a fuller and adequate discovery by particularizing the public and other documents referred to in paragraph 2 (d) and by setting out the dates of the letters referred to in paragraph 2 (c).

Colombo, 20th November, 1942. Sgd. H. A. ABEYEWARDENE 10
Proctor for 1st Defendant.

Received notice, we have cause to show.

Sgd. (Illegible)
Proctor for Plaintiff.

No. 26
Order
relating to
Discovery of
Documents
4-12-42.

No. 26.

Order relating to Discovery of Documents.

4th December, 1942.

ADV. MR. E. G. WICKREMANAYAKE for the 1st defendant.

ADV. MR. E. B. WICKREMANAYAKE for the plaintiff.

Mr. E. G. Wickremanayake says that further and better particulars 20 should be given with regard to (c) and (d) in the affidavit. Mr. Wickremanayake argues that affidavit is not a compliance of the Court's order.

The Court asks what section there is corresponding to section 100 which can be used under section 102.

Mr. E. G. Wickremanayake says there is no section but he submits that the affidavit is not a compliance with the Court's order. Counsel refers to section 109. Plaintiff has not listed her documents yet. 4 Q.B.D. 85. In that case discovery was refused. Bundle of letters identified but numbers marked with a letter and initialled by the objector. Discovery refused because there was sufficient material to identify the documents. 30 Note the first affidavit filed in that case held to be insufficient.

As a *modus vivendi* the Court suggests that the documents referred to in C. and D. should be brought before the Court which without reading them will number them and initial each.

Both sides are agreed to this in regard to para. (c) but say this does not touch para. (d).

Mr. E. B. Wickremanayake addresses Court :

No provision in the Code for the application made. Defendant says he has got all the letters written by defendant to plaintiff. How will it

help the defendant to know how many letters. Privilege is being claimed in regard to those. Relating solely to the plaintiff's case. 4 Q. B. D. only applies to a case where privilege is not claimed.

Mr. E. G. Wickremanayake does not agree with this view.

Mr. E. B. Wickremanayake refers to the report at page 87. Affidavit conclusive. Privilege claimed. No further particularisation required. The documents referred to in (c) cannot be inspected. No provision in the Code for another affidavit. 11 Q. B. D. 55 at 59. With regard to (d) also privilege is claimed.

10 Mr. E. G. Wickremanayake in reply.

Submits if the Court refused the first defendant's application prejudice will be caused to the 1st defendant.

First defendant is seeking to identify the documents which plaintiff says relate to her own case. Whether the document is privileged or not section 102 applies. Cites 4 Q. B. D. at pages 88 and 89. Even where privilege is claimed the affidavit will only be sufficient if the documents are identified. Page 68 11 Q. B. D. is a clear authority in favour of the 1st defendant. Law Reports 3 Chancery 809.

C. A. V.

20 Mr. E. B. Wickremanayake says that he is objecting on principle but he has no objection to producing the documents before Court and having them identified.

Both sides at this stage agree that the proctor for the plaintiff should produce the documents before me in Chambers tomorrow morning, namely the documents under (c) and (d) that the Court without reading them should number each of the series and initial each document and make a note of the number in the record.

Parties are disagreed on the question of costs. I am not here to bargain with parties. I will make my order.

30

Sgd. R. F. DIAS,
D. J.

ORDER :

The questions which have to be decided arose in this way : By his motion the 1st defendant moved under sec. 102 of the Civil Procedure Code for an order on the plaintiff to declare by affidavit all the documents which are or have been in her possession or power relating to this action. To this the plaintiff replied by affidavit. In this inquiry we are only concerned with the documents (c) and (d) and paragraph 3 of that affidavit. The 1st defendant being dissatisfied with this reply, moved by his motion
40 asking that the documents under (d) should be further particularized, and that the dates of the letters under (c) should be disclosed. At this stage of the proceedings the 1st defendant does not seek further discovery in view of the claim in paragraph 3 of the affidavit that these documents relate

No. 26
Order
relating to
Discovery of
Documents
4-12-42—
continued.

solely to the proof of plaintiff's own case. Counsel for the 1st defendant explains that the plaintiff has not filed her list of documents although the trial of the case is only a few days hence, and he urges that unless the number of the documents relied on by the plaintiff is made known to him, it may enable the plaintiff to produce a great many documents as evidence on the assertion that they had not been in her possession or power when the affidavit was sworn to.

Both counsel agreed that the proctor for the plaintiff should produce the documents before me in chambers, and that I should without reading them, number and initial each of them and note on the record the number 10 of documents so initialled and numbered. But the parties could not agree on the question of costs and it becomes necessary to decide the question raised.

Counsel for the plaintiff argues that there is no provision in the Code for the present application. I do not agree. I hold that if it is a fact that an inadequate affidavit has been filed under Sec. 102 the Court has power to order that a proper affidavit according to law should be filed. I fail to see how the application of the 1st defendant can be said to be unreasonable. He is not seeking inspection. He only wants to know under (c) and (d) how many documents the plaintiff has in her possession 20 or power.

I direct the plaintiff forthwith to produce all the documents she relies on under (c) and (d) before me in chambers, when without reading them, I shall number and initial each document and enter those facts on the record. At the trial the plaintiff will then be restricted subject to any other legal objections which may be taken to those documents only. The plaintiff will pay to the 1st defendant the costs of this inquiry.

Sgd. R. F. DIAS,
District Judge.

5-12-42.

No. 27.

30

Further Order relating to Discovery of Documents.

No. 27
Further
Order
relating to
Discovery of
Documents.
5-12-42.

5-12-42.

Mr. Jayawardene, Proctor for the plaintiff, sees me in chambers. I read to him the judgment which I intended delivering on Monday and he has brought the documents under (c) and (d). I go through the documents in each category and number and initial each document. Under (c) there are 70 envelopes and letters which I have numbered and initialled and returned to Mr. Jayawardene. Mr. Jayawardene under category (d) produces one document consisting of 9 pages which I initial and return to him.

Sgd. R. F. DIAS, 40
D. J.

Issues Framed.

11th December, 1942.

ADVOCATE MR. M. T. DE S. AMERASEKERA, K.C., with ADVOCATE MR. E. B. WICKREMANAYAKE and ADVOCATE MR. E. F. N. GRATIAEN for the plaintiff.

ADV. MR. E. G. WICKREMANAYAKE with ADV. A. H. C. DE SILVA for the first defendant.

ADV. MR. J. E. M. OBEYESEKERE with ADV. MR. MISSO and
10 ADV. MR. DAVID for the added-defendant.

Order of 5-12-42 is formally delivered this morning.

Mr. Amerasekera opens his case and suggests the following issues :—

1. Did the first defendant on or about 19th December, 1941, wrongfully and maliciously desert the plaintiff?
2. If so, is the plaintiff entitled to a decree of separation *a mensa et thoro*?
3. Is the plaintiff entitled to the custody of the children?
4. To what alimony is the plaintiff entitled?
5. What sum, if any, is payable to plaintiff for the maintenance of :
20 (a) the girl Hortense?
(b) the boy Joseph Richard?

Mr. Wickremanayake accepts the issues and suggests :

6. Did the plaintiff commit adultery with the 2nd defendant :
30 (a) On various occasions between 15th February, 1941, and 20th March, 1941, at "Merlton", Gregory's Road, Colombo?
(b) On various occasions between 20th April, 1941, and 20th August, 1941, at "Merlton", Colombo?
(c) On several occasions between 10th April, 1941, and 14th April, 1941, at Bandarawela at the boarding house run by Mr. & Mrs. Outschoorn and elsewhere?
(d) On the night of the 18th April, 1941, at Bandarawela at the house of Mr. Montague Jayawickrema?

With regard to issue 6 (d), Mr. Wickremanayake says that when he replied to the interrogatories the place of the alleged misconduct in (d) was not known. He says now that he is in a position to specify it and he says the alleged misconduct on 18th April, 1941, took place at Bandarawela in the house of Mr. Montague Jayawickrema.

7. Is the child Joseph Richard not a son of the 1st defendant?

8. If any part of issue 6 or issue 7 is answered in favour of the 1st defendant, is the 1st defendant entitled—
 (a) to a divorce?
 (b) to the custody of the child Hortense?
9. If any part of issue 6 is answered in the affirmative to what damages is the 1st entitled to against the 2nd defendant?

Mr. Obeyesekere objects to issue 6 (c). He objects to the words “and elsewhere”. He wants to know what the “and elsewhere” means.

In answer to me, Mr. Wickremanayake says “and elsewhere” means that the alleged misconduct took place in Bandarawela at Mrs. Outschoorn’s 10 place and elsewhere in Bandarawela.

Mr. Wickremanayake in further answer to the Court says that in addition to proving that misconduct took place in Mrs. Outschoorn’s house that the co-respondent and plaintiff went together at night under circumstances under which the Court will assume certain inferences.

Mr. Obeyesekere says the evidence should be confined to the statements made by Mr. Wickremanayake.

Mr. Wickremanayake assures counsel that this will be so.

Mr. Obeyesekere frames no issues.

Mr. Amerasekera associates himself with Mr. Obeyesekere but in view 20 of Mr. Wickremanayake’s statement he does not object to the issue.

Mr. Amerasekera objects to issue 7. He submits that issue 7 is irrelevant in a divorce case and any decision arrived at in this case will not be binding on the child who is not a party.

Mr. Wickremanayake admits that any finding on issue 7 will not bind the child. Mr. Wickremanayake refers to paragraph 7 of his answer and he refers to paragraph 3 of the plaintiff’s replication. Submits issue 7 is very material.

Mr. Amerasekera is heard in reply.

ORDER :

30

I allow issue 7 to stand. I think issue 7 is relevant on two grounds. It is relevant on the main issue of misconduct with the second defendant. It is also relevant on the ground whether first defendant has to pay maintenance in respect of the boy. I therefore allow all the issues to stand.

Mr. Amerasekera wants to mark marriage certificate P1 and a letter P2.

Mr. Wickremanayake objects to letter P2 being marked without being produced. This is a matrimonial action.

I ask Mr. Amerasekera having produced P1 and P2, whether he is leading any further evidence on the issues on which the burden is on him. 40 He replies in the negative.

Mr. Wickremanayake draws attention to section 154.

ORDER :

The Court in this case is in effect trying two separate actions. In the first place the Court is trying an action for judicial separation brought by the plaintiff against the first defendant. In order to succeed in that case the plaintiff will have to lead evidence which satisfies the conscience of the Court that the 1st defendant's conduct in leaving her is such as would justify the plaintiff in seeking the remedy she asks for. Then there is the action by the 1st defendant against the plaintiff and 2nd defendant. To succeed in that case the 1st defendant will have to satisfy the Court

10 that the plaintiff and 2nd defendant have committed matrimonial misconduct. After the issues were framed Mr. Amerasekera as counsel for the plaintiff opened his case. He has admitted that instead of calling his client into the box he proposes to put in the marriage certificate and document P2 and close his case. What the effect of that will be I do not know, but I do not agree with Mr. Amerasekera that section 114 of the Civil Procedure Code justifies him in his argument that simply because the 1st defendant admitted the genuineness of the document it immediately becomes an exhibit in the case. Section 114 must be read along with and subject to section 154 which enacts that "every document or writing

20 which a party intends to use as evidence against his opponent must be formally tendered by him in the course of proving his case at the time when its contents or purport are first immediately spoken to by a witness.

I therefore call upon Mr. Amerasekera to lead the evidence in his case. What evidence he leads is no concern of the Court at the present moment.

Sgd. R. F. DIAS,
D. J.

 No. 29.

Plaintiff's Evidence

MR. AMERASEKERA calls :

30 CORBETT JAYAWARDENA, affirmed :

I am a member of the firm of Messrs. Pereira and Gunasekera, Proctors for the plaintiff in this case. On behalf of the plaintiff I discovered documents. I served notice on the plaintiff which is filed of record to admit the genuineness of documents.

Q. Among others was letter by the first defendant to plaintiff dated 19th December, 1941 marked P2?

(Mr. Wickramanayake objects. This is only another way of getting round the order of the Court.

I allow the questions to be put.)

40 A. Yes,

No. 28
Issues
Framed
11-12-42—
continued.

No. 29
Plaintiff's
Evidence
Jaya-
wardena
Examination

No. 29
Plaintiff's
Evidence
Jaya-
wardena
Examination

Q. This letter has been in your custody since the notice was taken out?

A. Yes.

Jaya-
wardena
Cross-
Examination

XXD. by MR. WICKRAMANAYAKE.

Q. As far as the document all you know is that you called upon the first defendant to admit the genuineness of his signature? A. No, of the letter.

Q. You got that letter from your client? A. Yes.

Q. She is in Court?

A. Yes.

10

Q. With regard to the letter you know nothing about it except what your client has told you? A. Yes.

Q. You know nothing at all about the contents of the letter?

A. Except what is in the letter and the instructions.

Q. Except the latter you do not know the truth or otherwise of that letter? A. The contents of the letter and her instructions.

Q. You know nothing except what your client has told you?

A. Yes.

XXD. by MR. OBEYESEKERA. Nil.

REXD. Nil.

Sgd. R. F. DIAS,

D. J.

20

Mr. Amerasekera closes his case reading in evidence P1 and P2. Mr. Amerasekera reserves to himself the right to lead evidence on the issues the onus of which is on the first defendant.

Mr. Wickramanayake wants me to note that plaintiff will not be entitled to lead any further evidence on the issues the burden of which is on him namely issues 1 and 2.

Sgd. R. F. DIAS,

D. J. 30

No. 30
Defendant's
Evidence

No. 30.

Defendant's Evidence

Mr. Wickramanayake says that he first moves to call the plaintiff. Court adjourned for lunch,

Sgd. R. F. DIAS,

D. J.

After lunch.

I do not think the case for the defence can be dealt with in water-tight compartments. Mr. Wickremanayake is now meeting the case of the plaintiff and at the same time establishing his own case, and I do not think I can accede to the application that the plaintiff should be called.

No. 30
Defendant's
Evidence
continued.

MR. WICKREMANAYAKE calls :

STANLEY ALLES sworn.

Defendant's
Evidence
Stanley
Alles
Examination

I am the 1st defendant. I married the plaintiff in June, 1933.

Q. Was the marriage approved of by your parents? A. No.

10 Q. I believe this was a long standing love affair? A. Yes.

Q. When was there the first understanding between you and the plaintiff? A. Before I left for England in 1927.

Q. You had been at that time a student at the University College?
A. Yes, and I left for England in September to continue my studies.

Q. At that time were your parents aware of this understanding between you and the plaintiff? A. They were not.

(To Court :

Q. You are not related? A. We are.

Q. How? A. Her paternal grandmother and my mother are
20 sisters).

Q. Did your parents come to know of this understanding while you were in England? A. They did.

Q. While you were in England did this understanding come to an end? A. It came to an end at a certain stage.

Q. When you returned to Ceylon, at that time the understanding was no longer in existence? A. No.

Q. When did you return? A. In September, 1931.

Q. You started practising in Galle? A. I was working in the late Mr. de Vos' Chamber for some time at Galle. I came to Colombo
30 towards the end of 1931. On my return to Ceylon at the start I did not meet the plaintiff.

Q. How did you come to meet her? A. I went to the Law Dance in July, 1932.

Q. You met her again there? A. Yes.

Q. You had not seen her in the interval? A. Well I had seen her, that is all.

Q. You met her at the dance and thereafter sometime after that you began making advances and ultimately you proposed to her? A. Yes.

Q. Was that with the knowledge of your parents? A. No.

40 Q. After your engagement, after sometime did they become aware of it? A. Not till the following year. That is till 1933.

Q. You say they disapproved of it? A. Yes.

No. 30
Defendant's
Evidence
Stanley
Alles
Examination
continued.

Q. Did they make any attempts to break it up? A. They did.

Q. In spite of it you were attached to the young lady? A. Yes.

Q. Your parents were fairly wealthy? A. Yes.

Q. And you were brought up as a child of wealthy parents would be brought up? A. Yes.

(To Court :

We are five brothers and one sister in the family).

Even after I came to Ceylon I was supported by my parents.

Q. I take it you had a car? A. Yes, given to me by my mother.

Q. And later you had another car? A. Given to me by my 10
uncle and father.

Q. As a result of your insisting to get married to this lady did your parents thereafter give you any support? A. No.

Q. You married her in spite of the fact that you realised that you would not be getting any assistance from your parents? A. Yes.

(To Court :

Q. So then after you married her they ceased to support you?

A. Yes, I was entirely on my own).

Q. Her father too had been wealthy at one time? A. Yes.

Q. Had he been living on a fairly grand scale? A. Well, yes. 20

Q. Giving Champagne parties and entertaining lavishly? A.
Yes.

Q. After you married did you restrict your wife's ways of living or maintain the ordinary standard of living that you were accustomed to?

A. I did not try to restrict her and besides that she was living with her father at that time.

Q. You were for some time practising at the unofficial Bar and later acted as Crown Counsel for some time? A. Yes.

Q. What was your income at the start? A. Very little at the
start. 30

Q. And apart from what you got as Crown Counsel you did not earn much at the Bar? A. No.

Q. How did you get the money to keep her in comfort in which she had been used to? A. I raised money.

Q. You borrowed moneys? A. Yes.

Q. Throughout this period did you have much to do with your family, your mother, brothers and sisters? A. No, as a result of the marriage there was estrangement. I did not visit them till January, 1930 and even after that there were no visits till my parents came to reside in Colombo in July, 1935. 40

Q. Even then how frequent were the visits? A. Few and far between only on such occasions like Christmas and New Year.

Q. Throughout all this period were you very attached to your wife— during the earlier period? A. Yes.

Q. During the earlier period of your marriage had you any reason to distrust your wife? A. None whatever. We had a child in 1938, 30th June. It was in October, 1937 or September that I first called in a doctor during the early part of her conception.

Q. Is there any particular reason why such a long time elapsed between the marriage and the first child? A. I do not know that Dr. Wickremasooriya had performed a minor operation on her in 1935.

10 (To Court :

There were no contraceptives or such things used).

I was very glad at the arrival of the child.

Q. The doctor was called in in the early part of her first conception you say? A. Yes.

Q. How did the birth of this child affect the two of you? A. After that we were very happy together.

Q. The child was a great bond of unity between you? A. Yes.

Q. Was there any trouble with your wife or quarrels beyond ordinary differences? A. No.

20 Q. This went on till January 1940, up to that time you say you were living very happily? A. Yes.

Q. In 1940 January you underwent an operation? A. Yes. For appendicitis at the Private General Hospital. My father was a doctor and he was in Government Service at one time.

Q. Did you know Dr. Sama hin prior to the time of your operation? A. Yes.

Q. Were you very intimate at the time? A. No, just an acquaintance.

30 Q. Who administered the anæsthetic when you were operated? A. 2nd defendant.

Q. He was the General Hospital anæsthetic? A. Yes, at the time. The operation was in the Private General Hospital and he was called in as the anæsthetic. My wife used to visit me at the Private General Hospital.

Q. Did your wife come to know the 2nd defendant? A. Yes.

Q. She did not know him before that? A. Not prior to the operation.

Q. You left hospital on the 1st February? A. Yes.

40 Q. Then you were quiet for a few months you could not go about much and when you could go about you used to go about with your wife to parties and places like that? A. Yes.

Q. Did you meet anybody on such occasions? A. Yes, the 2nd defendant.

No. 30
Defendant's
Evidence
Stanley
Alles
Examination
continued.

Q. Did you go along with him? A. No, we used to meet him there.

Q. Where at those parties? A. Yes.

Q. Did you and your wife after some time become quite friendly with the 2nd defendant? A. Yes.

Q. You remember the Christmas of that year? A. Yes. I am a Roman Catholic. We attend midnight Mass on the 24th.

(To Court :

Q. 2nd defendant is a Muslim? A. He is a Malay. 10

Q. Christmas has no significance for him? A. No, except that it is a festive season of the year).

We had a midnight supper after midnight Mass usually.

Q. On this occasion, Christmas of 1940, who were the people who were there? A. Plaintiff's father who had come from Kandana and was staying the night with us, plaintiff's brother, her sister and the 2nd defendant.

(To Court :

The supper was in my house and I was the host).

Q. 2nd defendant was a friend of the family and he was known to 20 all the members of the family? A. Yes.

(To Court :

Q. He must have been a particularly good friend because although he was not a Christian he was invited for this feast? A. Yes).

I did not notice anything wrong between himself and my wife at that time. We saw the New Year in and we had a party to see the New Year in and at that party Mr. & Mrs. Ludowyke and her two daughters, the 2nd defendant and the four of his were present. The Ludowykes were friends of the 2nd defendant and we had got to know them through the 2nd defendant. 30

Q. In 1941 you had to go to Jaffna as Acting Crown Counsel?

A. Yes, I had to go there to take the session on the 1st February.

(To Court :

Q. Did you know you were going for a long time? A. No, at that time my original instructions were that I should be there only for the first half of the session. The session took over a month, there was a particularly long calendar and it went on till April.

Q. Why did you not take your wife with you? A. I was going to stay in the rest house, besides there was the child).

I went to Jaffna on the 1st and on the night of the 27th she left 40 Colombo. Mr. & Mrs. Krishnaratne who was the A. S. P. of the Northern Province was there and they invited her and she stayed there till the 4th of March.

Q. You continued to be in Jaffna till April? A. 8th April.

Q. After she returned from Jaffna while you were still at Jaffna did she make any suggestion to you about a holiday? A. She had written to me to say that it was advisable to take the baby up during the hot weather in Colombo and I wrote to Mrs. Solomons for her to be there. Mrs. Solomons was known to my people, and she runs a boarding house regularly as a business. I fixed it for a month and payment was to be by the day.

No. 30
Defendant's
Evidence
Stanley
Alles
Examination
continued.

Q. All this time had you any reason to believe there was anything
10 wrong up to this time? A. No.

Q. Your wife went up to Bandarawela? A. Yes, she went on the 22nd March. I left Jaffna on the 8th evening and came to Colombo on the 9th morning by train.

Q. Where did you spend your holiday? A. I had been invited by Mr. & Mrs. Krishnaratne at Ratnapura. He had been transferred there. Mr. A. O. Weeresinghe and myself went up. Mr. Weeresinghe was the office assistant of the Jaffna Kachcheri. I travelled in his car.

Q. While you were there did you go to Bandarawela? A. Yes. We ran up there, that was on the 11th April, it was Good Friday of 1941.

20 (To Court :

Q. You had come for your Easter Vacation why did you not go to see your wife? A. I had to be back in Colombo in office on the 13th April and that was the Easter week end in Bandarawela and I knew I would be unable to get any rooms at all, certainly not at the place where my wife was staying because she wrote and said that she herself had to shift rooms.....

(Mr. Obeyesekere objects)

There was no room in that house and my wife and her sister and the baby were occupying one room).

30 I do not have that letter which I received from my wife. I have destroyed all those letters.

Q. What did your wife say in that letter? A. She said that she had been allotted a particular room in the boarding house and she had to shift from that room. I would have gone if she had not written that letter to me but there was no room and besides her sister was occupying that same room with my wife.

Q. So on the 11th of April you thought you would run up from Ratnapura? A. Yes. I went in Mr. Weeresinghe's car.

40 Q. You were going in Mr. Weeresinghe's car and his convenience had to be consulted? A. Yes.

Q. Did you inform your wife you were going up? A. I told my wife I would be coming up during that week end. I told her by letter.

Q. Well when you went up there did you meet your wife? A. Not at the boarding house. I went to the boarding house she was not

No. 30
Defendant's
Evidence
Stanley
Alles
Examination
continued.

there but the child was there with the ayah. I was with the child for about half an hour. I was playing with the child for about half an hour and I had brought two pendants for the child which I handed over to Mrs. Solomons.

Q. When you left did you expect to see your wife? *A.* I had been told that she had gone to Town and I went to the town in the hope of meeting her. I met her just outside Millers.

Q. Who was with her? *A.* 2nd defendant, her sister and a Mr. Perumal. They were in Perumal's car.

(To Court :

10

Q. What, was Millers open on Good Friday? *A.* It was not open but I saw them near Millers).

Q. Well you came away? *A.* I left after a little while. We were standing on the road for 15 or 20 minutes and Mr. Weeresinghe was anxious to get back and we got back to Belihul Oya for lunch.

(To Court :

Q. You say you were not your own master in that car, it was Weeresinghe's car and you had to consult his convenience? *A.* Yes.)

Q. When did you resume work after the vacation? *A.* On Easter Tuesday, that would be the 15th.

20

Q. Did you go back to Jaffna? *A.* No I was in office here on the 15th April.

Q. Did you receive any letter from your wife? *A.* When I got back that evening from office after work I found a letter awaiting me which had been brought down by the 2nd defendant.

(To Court :

Where is that letter? *A.* I have not got those letters.

Q. How do you know it was brought by the 2nd defendant? *A.* Because he told me. What is more the plaintiff in her correspondence had said she was sending it by him.

30

(Mr. Obeyesekere objects. I agree the evidence is rather loose).

2nd defendant also told me subsequently that he brought that letter).

Q. The 17th of April was I think your birthday? *A.* Yes.

Q. What happened on the 16th? *A.* On the 16th April when I got back from work I found a telegram awaiting me from the plaintiff to say that she was leaving for Colombo that night with the baby. I wired back that if she was thinking of returning again to Bandarawela that the trip down was useless and she again wired to say that all arrangements had been made and she was leaving that night, and she came.

(To Court :

40

Q. She came for your birthday? *A.* Yes.

Q. Although you did not think the expenditure was justified?
A. Yes).

Q. Did you meet her at the station? A. Yes. Mr. Weeresinghe gave me his car and I went to the station and met her.

Q. In the evening did friends drop in for your birthday? A. Yes.

Q. Who dropped in? A. Mr. & Mrs. Krishnaratne and daughter, Mr. Amerasekere and family, Mr. & Mrs. Namasivayam, Mr. Montague Jayawickreme and the Ludowykes.

No. 30
Defendant's
Evidence
Stanley
Alles
Examination
continued.

(To Court :

Q. Not the 2nd defendant? A. Oh yes the 2nd defendant also).

Q. At that time did your wife decide how she was going back to 10 Bandarawela on the 17th? A. Not on the 17th. On the 17th she only said she would be going back because her sister was still there and the ayah.

Q. She went back? A. Yes on the 18th.

Q. How did she go? A. By car.

Q. Whose car? A. Mr. Namasivayam's car.

Q. Who else went? A. 2nd defendant and Mrs. Ludowyke and Mr. Namasivayam.

Q. Were you in Colombo when she returned? A. No, I left on the 19th night, Saturday. She had not returned by then.

20 Q. But the month was up on the 20th? A. 22nd will be more correct.

Q. Before you went on the 19th did you meet her? A. On the morning of the 19th my mother telephoned to me and came to see me.

Q. Did she have a talk with you? A. Yes she did. Thereafter when I was in Jaffna I received a letter from my wife, it must have been on the 7th or 8th of May.

Q. What did she tell you in that letter?

(Mr. Obeyesekere objects. I think the evidence is admissible).

30 Q. What did she tell you in that letter? A. I might mention that I did not receive a letter from my wife about that time although I was expecting one. She had not written for some time. In that letter she said my mother had come and made a complaint against her.

Q. She complained that your mother had said something to her?

A. Yes.

Q. Did you have a telephone communication with her? A. Yes. I had not heard from her for some time and I telephoned from the Courts in Jaffna and that happened to be the date on which my mother had come.

Q. Did she mention that fact to you? A. She mentioned to me that my mother had come and said something so I awaited her letter.

40 Q. Did you believe the things your mother had said? A. No.

(To Court :

Q. You sided your wife? A. Yes).

Q. Did you write to your mother? A. Yes.

No. 30
Defendant's
Evidence
Stanley
Alles
Examination
continued.

Q. You produce 1D1.....(Mr. Obeyesekere objects to the letter written by the witness to his mother being produced. Submits it must come from proper custody.

Mr. Wickremanayake retorts that P2 also should have come from proper custody.

I uphold the objection. I think the evidence is getting too remote. Witness has clearly stated that he stood by his wife).

Q. Well thereafter you continued in Jaffna till what date? A. Till the evening of the 8th August. I came to Colombo on the morning of the 9th. 10

Q. Before you returned on the 8th August did you receive any letter from the 2nd defendant? A. Yes.

Q. When was that? A. About the first half of July. I have not got that letter. I have destroyed it. I did not think it would be necessary.

Q. What did he inform you in that letter? A. He told me that the plaintiff was ill.

(Mr. Obeyesekere objects. Objection over ruled). And suggested that I should come down for a week end.

Q. Were you able to come at that time? A. I was unable to 20 come and I wrote to him to that effect.

I came down on the 8th of August from Jaffna. The Jaffna night mail leaves there in the evening and comes here the following morning.

Q. The 9th of August was the Governor's Cup Day? A. Yes.

Q. Did you go to the races that day? A. Yes.

Q. Fairly busy day at the race course? A. Very.

Q. And very tiring? A. Yes, very tiring.

Q. You went back to Jaffna on? A. On the 10th night.

Q. The night of the 9th you spent at Merlton? A. Yes.

(To Court :

Q. And your wife was in the same house under the same roof? 80 Yes).

Q. When did you next return? A. On the 21st August by night mail.

Q. Had you any reason to doubt the conduct of your wife? A. None whatever.

Q. When you did return did Dr. Samahin visit the house? A. Yes.

Q. At what time did he come? A. In the evenings.

Q. Social visits, and at what time did he leave? A. A little 40 later. He drops in on his way to the Orient Club.

Q. Was there any occasion for quarrels in October? A. Yes, when I got back in September and October I found she was going out and often leaving the child in charge of the servants and I told her she should not be going out like that and neglecting the child.

No. 30
Defendant's
Evidence
Stanley
Alles
Examination
continued.

Q. Did you make any suggestion to her apart from neglecting the child? A. Apart from her neglecting the child, I had no occasion to find fault with her.

(To Court :

Q. Did you have rows over that matter? A. We had arguments.
10 We talk to each other in English. The servants talk Sinhalese. I do not know whether Alice talks English.

Q. Could the servants overhear you reprimanding your wife with leaving the child in the hands of the servants? A. Not likely because I do not raise my voice.

Q. Sure? A. I am almost certain of that.

Q. Can anything like that in the house take place without the servants knowing? A. I did not have a row over it but I just told her that she should not do it.

Q. Did the servants communicate anything to you? A. Nothing)
20 Dr. Wickremasooriya visited me in November.

Q. At that time you were aware that your wife was expecting a baby? A. Towards the latter part of September she told me that she was expecting a baby.

(To Court :

Q. What did you say to that? A. I had nothing to say I was not surprised. I came back in August and about the latter part of September she said she was expecting to have a baby.

Q. Can you say anything more that she said. Did she say why she was of that opinion? A. Because she had not had her monthly
30 periods.

Q. That is all? A. Yes.)

Q. In November Dr. Wickremasooriya called? A. Yes.

Q. Can you say what part of November? A. Second half of November I cannot fix the date beyond saying it was a Saturday.

Q. Where were you when he examined the patient? A. I was in the front verandah.

Q. Did you know the doctor was being sent for? A. Yes.

Q. Did you know why? A. I took it it was in connection with her condition.

40 (To Court :

Dr. Wickremasooriya is not the Superintendent of the Lying-in-Home, he is a gynæcologist).

No. 30
Defendant's
Evidence
Stanley
Alles
Examination
continued.

Q. After he examined the patient, he came out, and what did he say?

A. He told me that he thought that she was in her 5th month.

Q. Was she present when he said that? A. No he came out of the room and told me that.

(To Court :

Q. Do you say that Dr. Wickremasooriya will support you? A. He definitely told me that whether he will support me I do not know.

Q. Did you pay his fee? A. I did not pay him. He usually sends in his bill. He has not sent his bill).

Q. After that did you have a conversation with your wife? A. I told her what Dr. Wickremasooriya told me and then she told me that the doctor was making a mistake. 10

(To Court :

Q. The emphasis was on the 5th month, what was it that upset you about the 5th month? A. Well the 5th month took it back to July and I was not here in July).

Q. The mistake was with regard to? A. The number of months.

(To Court :

Q. There was no contact between you and your wife in July?

A. None whatever because I came in August). 20

Q. Up to that date did you have any doubts at all about your wife?

A. I had none up to that date.

Q. When your wife told you that the doctor might be making a mistake what did you think? Were you satisfied with that explanation?

A. Not fully.

(To Court :

Q. Why did you not call in another doctor? A. Dr. Wickremasooriya was good enough for me.

Q. You see this is a serious matter? A. It was.

Q. And your wife then said it was a mistake. People do make mistakes? A. But at that stage I was not worried about the question of the paternity of the child, I was only having Dr. Wickremasooriya's statement at the back of my mind). 30

Q. From that date onwards did you do anything which you had not done before? A. Yes.

Q. What was that? A. Previously I had not taken any notice of any stories I had heard about the plaintiff and the 2nd defendant. But from that time onwards I made a few discreet inquiries from friends.

Q. At that stage were you satisfied that she had not been behaving properly? A. I was satisfied that she had gone out far too often in the evenings. 40

Q. Did you speak to her about it? A. Yes I did.

Q. What did you tell her? A. That she should not go about as often as she had done.

Q. This takes us to December, was there any event which took place on the 5th December? A. Yes.

Q. What? A. On the 5th of December was the Police dance. I had been invited by some friends to the dance. It was a subscription dance.

(To Court :

Q. Why was not your wife invited? A. I will come to that in 10 a moment.

Q. I want to know? A. Because my wife was not getting about then to dances.

Q. Some friends had bought the tickets and had invited you to form a party, it is curious is it not to ask the husband and not the wife? A. They asked me whether my wife would join.....

(Mr. Obeyesekere objects—hearsay).

Q. Anyhow you alone were asked? A. We were both asked but I knew she would not go because of her condition.

Q. So you only went? A. Yes.

20 Q. Who was the person spoken to about it? A. I was.

Q. And you replied on behalf of both? A. Yes.

Q. Why is it you did not expect your wife to go? A. Because she was in delicate health and she had always ridiculed the idea of people in that state going about.

Q. The first time she conceived can you tell us what happened to her? A. September and October 1937 she conceived and she was on her back till about March or April, 1938.

Q. Why? A. Because Dr. Wickremasooriya who was in attendance said she should remain on her back because she was having 30 hæmmorrhage right through.

Q. Well, what did she want to do with regard to this dance?

A. She wanted to go to the dance. I told her that she could not.

Q. You went to the office that day? A. Yes, and I went back and found the child was there with the servants and that she was not in the house.

Q. You remember Dr. Wickremasooriya spoke to you and you spoke to your wife on that occasion after your conversation with your wife did she want to do anything? A. Yes, she had earlier told one of the servant women who was having earache to put a garlic into her ear and 40 she did so and it could not be taken out and I found fault with my wife for having caused all that trouble because I had to take the woman to the

No. 30
Defendant's
Evidence
Stanley
Alles
Examination
continued.

Out Patients' Dept. and bring her back and she was howling with pain and I found fault with my wife over it. I had in mind at the time Dr. Wickremasooriya's statement and as a result of this she wanted to leave the house.

Q. When was that? A. On the day that Dr. Wickremasooriya came.

Q. What did she do? A. She was in a house coat at the time after the Doctor examined her and she was wearing a saree when Mr. and Mrs. Ludowyke turned up.

Q. Did they stay to dinner? A. Yes they stayed. 10

Q. Did your wife come to dinner? A. No.

Q. Well on that day you went back home and you found the child there and wife gone away? A. Yes. I knew she would go to her aunt's place Mrs. Wallace who lived in Dehiwela and I went there.

Q. About this time apart from objecting to your wife going about with second defendant did you have any information at all about any misconduct? A. No information about any misconduct whatever.

Q. Did you bring her back on the 5th evening? A. Yes.

(To Court :

Q. Did you go to the dance? A. Yes I did). 20

Q. Did you take her? A. No.

Q. While you were at the dance what happened? A. While I was there she turned up there with the 2nd defendant.

Q. Did you say anything about it at the dance? A. Not a word.

Q. Why not? A. Because I did not want to create a scene there.

(To Court :

Q. You were not in the Attorney-General's Department then?

A. No.

Q. You were in the Department off and on? A. Yes.

Q. Had that fact anything to do with it? A. No. I just did not want to create a scene at the dance).

Q. Did you notice your wife leave the dance? A. No.

Q. How did you know she had gone? A. She was not there after a certain point of time.

Q. When you went home was she there? A. Yes.

Q. Well what took place then? A. When I got back I asked her why she had come contrary to what I had told her. She said she can do what she liked, and go where she liked and would not take any orders from me.

Q. No reference was made to the 2nd defendant? A. No. 40

Q. Well the next event was the Silver Wings Carnival. You went to the Silver Wings Carnival? A. Yes.

Q. Did you take your wife? A. No. I did not think she should go about in that condition. That was a public place and I felt she should not go about in that condition to such places and she herself had ridiculed the idea of people doing so.

No. 30
Defendant's
Evidence
Stanley
Alles
Examination
continued.

(To Court :

Q. You objected then not because she was going with the 2nd defendant but because you thought a pregnant woman should not go to these functions? A. Yes.

Q. But what did it matter? A. At public places I did not think she should be seen like that and she herself had often said that people should not go about like that and laughed at people who did).

Q. When you were at the Carnival did she turn up there? A. Yes, with the 2nd defendant. I questioned her again and she repeated the statement she had made.

Q. That is when you came home? A. Yes.

Q. As a result of all this did you decide that you should have to take some action? A. Yes. I decided it was impossible to continue life with her considering her attitude towards me.

(To Court :

20 Even at this time did you have any suspicion of misconduct? A. None whatever).

Did you have any evidence of misconduct? A. No.

(To Court :

Q. Your story is that things had got to such a pass that something had to be done about it? A. Yes.)

Q. You told us earlier that after November after you made enquiries you had told her not to go about with 2nd defendant? A. Yes.

(To Court :

Q. In the second half of November Dr. Wickremasooriya had made 80 a certain statement, then came the two incidents—the Police Dance and the Silver Wings Carnival—what about the 5 months had you taken any steps about that matter? A. No.

Q. Dr. Wickremasooriya had made a definite statement and as against that she had told you that probably the doctor had made a mistake. How many months did she say it was? A. She said it must be right for August. That is the conception).

Q. When you decided that life with her was intolerable, you had to do something, what steps did you take? A. I went and saw my brother, having come to a decision. He is Dr. R. F. Alles. I went and 40 saw him on the 16th of December.

Q. When did you first think of going and seeing him? A. After the row on the 7th I decided to go and see him.

No. 30
Defendant's
Evidence
Stanley
Alles
Examination
continued.

Q. Prior to the 16th December had you any communication with the members of your family about your family movements? A. None whatever.

Q. On that occasion you saw your brother? A. Yes at his house in Barnes Place.

Q. What was your object in seeing him? A. I wanted to place before him my difficulties with regard to going on much further in my married life and to ask him to speak to my mother and to see whether she would take me back to her house with my child.

(To Court :

10

Q. Then you had made up your mind to leave your wife? A. Yes.

Q. Why? A. Because I found that she was getting uncontrollable and would not listen to me).

Q. You said something more? A. And she used to have hysterical outbursts.

(To Court :

Q. You know the law of malicious desertion don't you? A. Yes.

Q. At that date did you know? A. Yes.

Q. Did you think it was justifiable on this ground to leave your wife? A. Yes. 20

Q. Do you say that she was finally repudiating the married state?

A. It amounted to that.

Q. After you returned from Jaffna did you have relations with your wife? A. Yes.

Q. Regularly? A. Yes.)

Q. Till when? A. Till the date in November when Dr. Wickrema-sooriya spoke to me.

Q. You told me that there were hysterical outbursts and that she would not listen to you. Would not listen to what? A. To what I told her about going about. 30

Q. Going about? A. With the 2nd defendant. She persisted in going despite my telling her not to.

Q. When did you tell her not to go with the 2nd defendant? A. After the 22nd November.

Q. And what you were objecting to was her going about with the 2nd defendant despite that? A. Yes.

(To Court :

Q. She never refused access to her after you returned from Jaffna?

A. No.)

40

Q. You spoke to Dr. Alles on the 16th and after that did you meet your mother? A. Not till the night of the 19th. That is after I had left the house.

Q. You went to your mother's house then? A. Yes.

Q. I am putting this question to you because it is alleged in the
 10 plaintiff that you deserted the plaintiff at the instigation of your mother?

A. That is not so because I had not met my mother for a considerable
 time prior to that.

No. 30
 Defendant's
 Evidence
 Stanley
 Alles
 Examination
 continued.

Q. What took place on the 19th? A. On the 19th was the
 Medical Dance and I knew that the plaintiff would go to it because the
 20th was the 2nd defendant's birthday.

Q. Had you been invited for the dance? A. Yes by the 2nd
 10 defendant to be his guest and I had refused.

On the 19th morning while I was in the Law Library plaintiff rang
 me up and told me that her father was very anxious that her sister should
 go to the Dance. I said I would not go. She then said if I did not go
 she would go. I told her it was a matter for her. That I was not going
 myself. When I got back she told me that her brother had promised to
 take her.

Q. This was all before you left the house? A. Yes.

Q. You told me you felt certain she would go? A. Yes.

Q. Did you make any arrangements in view of the anticipations you
 20 had? A. Yes.

Q. What? A. I told my mother's driver to have a lorry
 available to me on the night of the 19th because possibly I would be able
 to leave that day.

Q. Why were you going to make these preparations on the 19th
 night? A. Because I knew she would go and I was anxious to bring
 the child.

Q. And in your letter you say you wanted to avoid a scene? A.
 Yes. Because she would have created a scene if I took the child away
 when she was in the house.

30 Q. You went away that night? A. Yes.

Q. And did you make any entry in the Police Station? A. Yes.
 Cinnamon Gardens Police Station.

(Mr. Wickremanayake undertakes to produce the entry).

Q. And having gone away you wrote the letter P2? A. Yes.
 I wrote it on the 19th and posted it on the 20th. I posted two copies—
 a registered copy and an ordinary letter.

(To Court :

Q. When you wrote that letter had you reason to believe that your
 wife had been unfaithful to you with the 2nd defendant? A. No.)

40 Q. But you had objected to her going out with him? A. Yes.

Q. Why did you ask her not to? A. Because of her condition
 and of the scandal in the town.

No. 30
Defendant's
Evidence
Stanley
Alles
Examination
continued.

(To Court :

Q. You swear at the date you wrote that letter you had no reason to believe that your wife had misconducted herself? A. No. I had no evidence then.)

Q. After you left the house did you get to know anything more?

A. Yes. After I left the house the servants came round to my mother's house on the 21st.

Q. By that date there had been this break with your wife? A. Yes.

Q. Who are the servants who came? A. Alice came and the 10 ayah of the baby Sophia I think. She is not a witness.

Q. Where were these two women when you left the house? A. At Merlton. The whole staff remained behind bar my personal boy.

Q. These two women came on their own to you? A. Yes.

Q. And they gave you certain information? A. Yes.

Q. As a result of that information you received did you begin to make further inquiries? A. Yes.

Q. Did you receive further information? A. Yes.

Q. Have you been able to trace some of the persons who were able to give you first hand information? A. Yes. 20

(To Court :

Q. By following the trail you got direct evidence? A. Yes.

Q. And it is in consequence of the information you received that you made the allegations in the answer? A. Yes.

Q. Why did you then wait for your wife to file action? A. I was advised by my lawyers to await the birth of the child which took place on the 26th of March, 1942.

Q. Then why did you not file immediately after that? A. I did have a plaint ready. It was drafted by Mr. Ranawake Advocate during the Easter holidays but in the meantime summons was served on me). 30

Q. As a matter of fact who were the lawyers who advised you to wait till the child was born? A. Mr. Wickremanayake and Mr. H. V. Perera.

Q. At the time this plaint was filed were they in Colombo? A. No.

Q. You told the Court you were in Jaffna from 1-2 to 8-4 and then again from 20-4 to 8th August. You produce marked 1D1 a certified copy of an extract from the Jaffna U. C. Rest House Visitors' Book? Yes.

I have not got the receipted bills. I paid by cheque. 40

Q. You produce your batta sheet showing that you drew batta for being in Jaffna during that period? A. Yes. My batta was Rs. 7 a day (1D2). (Mr. Wickremanayake says there are 7 sheets).

Q. Was there any other Crown Counsel in Jaffna during this period ?

A. From May onward Mr. Nihal Gunasekera was with me. We were going the Myliddy Case together. He was there from the 1st of May. He was in Jaffna as Crown Counsel and he led the prosecution in the Myliddy Case. I was his junior. Mr. Gunasekera was there till the end.

No. 30
Defendant's
Evidence
Stanley
Alles
Examination
continued.

I produce the sketch of Merlton 1D3. It is not to scale. It is a sketch of the house Merlton. The rooms are marked. There is a front verandah. Then abutting that is a side room with the office room on one side on the left and bed room on the right. By the verandah portion just by the office room there are some steps on a side. There is room to park a car there by the steps. There is a sitting room and the first bed room there is on the right of the sitting room. That was the bed room occupied by the two of us. That is the front bed room on the right. The room adjoining it was occupied by plaintiff's sister. She was also staying with me till the end of August. She is about 17 or 18 years old. She was in the Convent and she came back in 1939.

(To Court :

Q. During this period of misconduct at Merlton this girl was staying in this house ? A. Yes.

20 Q. So between 20-4 and 20-8 also she was there ? A. Yes.

Q. She was an unmarried girl ? A. Yes).

The room adjacent to my sister-in-law's room was the baby's room. The two ayahs slept in the baby's room. Next to the office room is a spare room. That is a spare bed room. It was the guests' room. The back verandah is an open verandah. On the two sides are two bath rooms and people from the baby's room can come to the bath room through the enclosed passage with a low railing.

Q. Has the bath room adjoining the spare room any door opening out to the garden ? A. Yes, facing the kitchen quarters with steps going down.

The back verandah is an open back verandah. The back verandah had a door leading to the baby's room.

Q. A person leaving that bath room by the side can he come to the baby's room or bed rooms without being seen from the front ? A. It cannot be done because there are windows there and glass shutters and anyone standing in the front verandah can look right through into that back verandah.

Q. Is it possible for any one to go from the spare room by that bath room on to the bed room ? A. Yes, because there are steps leading to the bath room and there is a high shoe flower hedge. He would have to go across the garden behind the hedge. By the baby's room is there a window ? A. Yes.

Mr. Paul de Costa was living in the spare room till October, 1940, when he left Colombo and went to Kandana.

No. 30
Defendant's
Evidence
Stanley
Alles
Examination
continued.

(To Court :

My sister-in-law came to stay with me in September, 1939. 2nd defendant is married. He has got children of his own and I think the eldest is 16 or 17 and she is a daughter).

Q. You remember a wristlet watch you had? A. Yes.

(For facility of reference I mark the internal rooms of 1D3 as follows:—

Front verandah	...	A.	
Office	...	B.	
Sitting Room	...	C.	
Bedroom on the right side	...	D.	10
Merita's bed room	...	E.	
Dining Room	...	F.	
Spare room	...	G.	
Bath room on the left hand side	...	H.	
Bath room on the right hand side	...	J.	
Baby's room	...	K.	
Back verandah behind baby's room	...	L.	
Kitchen back verandah	...	M.	

Q. What happened to that watch in December, 1941? A. I had a gold watch which she had given me earlier. About the 10th of December 20 she told me that while out shopping at Hamer Bros. she had seen some new watches and would I like to exchange my one. I said it was not necessary because the one I had was very satisfactory. That was just before the Police Dance.

Q. Did you give it to her? A. I said that it was not necessary.

Q. What did you find? A. On the 19th when I came back from work I found a new gold watch in my ward robe and she told me that she had given my watch in part exchange to Hamer Bros. and taken that one.

Q. You charge the added defendant with adultery on the dates specified? A. Yes. 80

Q. That is you told us as much as you were able to ascertain?
A. Yes.

Q. In answer to interrogatories you set out certain particulars and with regard to 18th of December you stated that you are unable to specify the place? A. Yes.

Q. That place you have now specified? A. Yes.

At Montague Jayawickrema's place.

Q. Of this alleged misconducts you know nothing personally about them? A. No.

Q. Your case will depend on the witnesses you will be calling? 40
A. Yes.

Q. At the date you swore this affidavit in answer to the interrogatories you were aware of what you told us that he had gone to Bandara-wela and that you yourself went there and what was the evidence available?

A. That she had spent the night of the 18th April out of Mr. Solomons' house. Subsequent to my swearing the affidavit I learnt that she spent the night at Mr. Jayawickrema's house.

Sgd. R. F. DIAS,
D. J.

Let summons reissue on such witnesses as parties want reissued for the dates indicated by the Proctors.

Sgd. R. F. DIAS,
D. J.

14-12-42.

Counsel as before.

STANLEY ALLES—Sworn.

Mr. Wickremanayake produces extract from the Information Book dated 19-12-41 1D4.

Mr. Wickremanayake marks letter sent by the plaintiff to the witness in reply to P2, 1D5 dated 22-12-41.

20 Q. She says in this letter that she returned from the Medical Dance which you persuaded her to attend with Dr. Samahin, is that correct?

A. No. I did not persuade her to attend the dance.

Q. She says that her own father and mother were protesting against "our association with Dr. Samahin" is that so? A. To my knowledge there was no such protest by her parents.

Q. Did Father O'Halloran talk to you about your association with Dr. Samahin? A. No.

Q. She says "unfortunately my enemies and your enemies have now captured you"? A. That is not correct.

30 I sent no reply to that letter.

XXD. by MR. AMERESEKERA.

Q. Did a Police Officer come and take an inventory of the furniture?

A. No. I was told that it was a civil matter.

Q. Did you make an inventory yourself when you left on the night of the 19th? A. No.

Q. You removed certain jewellery? A. No.

Q. What did you remove? A. My personal belongings only.

Q. Can you tell me more definitely what they are? A. My ward-robe, my dressing table, my office table and chair and a bed.

40 (To Court :

Q. Not your books? A. Yes, my books also).

No. 30
Defendant's
Evidence
Stanley
Alles
Examination
continued.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
continued.

Q. Did you also remove a gold watch that was in the ward robe?

A. Yes.

Q. That is the gold watch that had been purchased from Hamer Bros.?

A. So I believe.

Q. That is what your wife told you? A. Yes.

Q. Did you remove your wedding ring, you had given your wife?

A. I did not have it.

Q. Where was it? A. I had pawned it earlier and I had not redeemed it.

Q. Why was it not with your wife? A. The ring with which you married your wife? A. That was with her.

Q. Did she give you a ring? A. Yes.

Q. That is the ring you pawned? A. Yes.

Q. And you had not redeemed it at the time you left? A. No.

Q. Have you since redeemed it? A. No.

(To Court :

Q. When did you pawn this ring? A. Much earlier—long before 19th December.

Q. Did she know it? A. Yes.)

Q. She was also aware of your having pawned other pieces of jewellery? A. No, because I did not.

Q. Did you pawn a gold wristlet watch of yours? A. No.

Q. Is this the only article you pawned? A. Yes.

(To Court :

Q. We know from the previous proceedings that in November, 1941 you had to give a pro-note? A. Yes, and even earlier).

I proceeded to England in 1927 September. That was for the purpose of my education.

Q. Before that you accompanied your father and returned? A. Yes, in 1922.

Q. How long did you stay in England on that occasion? A. Six months.

Q. When you went in 1927 how long did you remain? A. I was there till 1931.

(To Court :

Q. The Inns of Court or Varsity? A. London University).

The London University is not a residential University and I lived out. R. F. Alles was also in England at the time. He went there before I went. He came back a year after I came.

Q. 2nd defendant was also in England? A. He told me so. I never met him there. 2nd defendant is well known to my brother Reggie. I do not recollect having met 2nd defendant in England at all. He was a medical student and I was a law student.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
continued.

Q. After your brother returned, Dr. Alles, he married and went into residence at Barnes Place? A. Not originally but later. I cannot remember when he came to Barnes Place. After he married he lived in Sea View, Bambalapitiya. He was then transferred to Mutwal and thereafter I think he came to Barnes Place. He never lived at my mother's place. I married in 1933 and then my father and mother were living in Galle.

Q. Did your parents attend your wedding? A. Yes.

Q. But you did not visit them immediately after you got married? A. Not till January, 1934.

Q. That was for Christmas? A. No, in January for the New Year.

Q. After that you occasionally visited your father and mother at Galle? A. No.

Q. After you married you lived in Colombo? A. Yes at Rockmore with my father-in-law. I remained at Rockmore till September, 1936.

Q. In the meantime your parents had moved to Colombo and went into residence at Laurentum in July, 1935? A. Yes.

Q. That is their own house put up by your father? A. Yes.

Q. Your visits to your parents then at Laurentum were few and far between? A. Yes.

Q. What was the cause of the estrangement between yourself and your parents? A. My marrying the plaintiff.

Q. What was the objection? A. The objection was mainly on the ground of her mother being a burgher.

Q. They persisted in this objection and had nothing to do with you even 3 years after the marriage? A. Yes.

Q. It was particularly strong in the case of your mother? A. Yes.

Q. Your father did visit you occasionally at Rockmore? A. Yes.

Q. As a matter of fact your personal relations with your father were more cordial? A. Yes.

Q. Although he was not so affectionate as he used to be? A. I cannot answer that.

Q. Is that not what you felt? A. He was very nice to me that is all I can say.

Q. You were your father's favourite son? A. I cannot answer that. My father died in 1937.

Q. And your mother came into possession of the entire estate of your father? A. Yes.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
continued.

Q. He left a considerable estate? A. I am not aware.

He left a Will and under the Will he left the properties to my mother completely—the full dominium.

Q. At the time of your father's death you had an unmarried sister in the house? A. No. She was married.

Q. Two of your brothers continued to live with your mother?
A. Yes.

Q. It is at that time that your brother Reggie went into residence there? A. After my father's death. I think he was there for some time. I cannot say how long. 10

I left Rockmore and went into residence to Shady Grove I think in September, 1936. I lived there on my own. I was permitted to have the rent of Merlton by my father-in-law.

Q. Is that the only allowance he made apart from the assistance he gave your wife? A. Yes.

The rent of Merlton was Rs. 175 at that time. It never went beyond Rs. 200 a month. Hortense was born when we were at Reid Avenue. While I was on circuit at Batticaloa plaintiff's father took a house in Pamankadde and after my wife and I returned from Batticaloa we moved in there. 20

Q. You took your wife to Batticaloa? A. Yes.

Q. And when this session was coming to an end you asked your father-in-law to book a house for you in Colombo? A. No, he did it on his own.

Q. And he himself came to live with you? A. Because he intended to come and live. But as a matter of fact after I came he did not come. He booked the house we vacated. From Havelock Road we came to Reid Avenue and there the child was born. My mother used to come occasionally because after my father died our relations were quite alright. 30

Q. Till when did these relations continue to be alright? A. I believe till 1939.

Q. Early or late? A. Late.

Q. That means that you and your wife regularly visited her?
A. Yes.

Q. You used to go particularly on Sunday morning, practically every Sunday? A. No, occasionally.

Q. Seldom you kept away? A. No, I would not say that.

Q. Your relations were very cordial? A. Yes.

Q. What they should be between mother and son? A. Yes. 40

Q. What was the cause of the break in 1939? A. In 1939 there was some trouble over the fact that they had gone to Bandarawela without inviting us and relations got a little strained over it.

Q. Why was it, because she had taken the others? A. All of them shared the expenses. All went up and they shared the expenses.

Q. You were not included to join this charmed circle, you were excluded? A. Yes.

Q. You were both disappointed about it? A. The three of us were disappointed.

After that we did visit them in 1940. The Bandarawela season is in August but my mother went up in December, 1939.

Q. After that of course it would be correct to say that you and your wife were formal with your mother? A. No. After we visited her in 1940 things were normal again. In 1940 we paid our New Year's visit to her.

Q. She had returned? A. Yes.

Q. That same month you fell ill? A. Yes, I was operated for appendicitis in January, almost immediately after that.

Q. She visited you in hospital? A. Yes, my mother did. She was there on the very day I was operated.

Q. Again the normal relations were continued and went on for how long? A. They were quite normal right up to 1941.

Q. Up to the time you went up to Jaffna you regularly visited your mother and she visited you? A. Yes.

Q. Until 8-4-41 the relations between you, your wife and mother were cordial? A. I would take it up to May—even later.

J. M. Alles is my paternal uncle—my father's brother. He died in 1939 I think but I am not sure. It may be July, 1939. He left a Will.

Q. He left his wife and your brother Reggie were appointed Executors under the Will? A. Yes.

Q. In case your brother Reggie refused you were to be the Executor? A. Yes.

Q. Have you read the Will? A. I know the contents. I have not read the entirety of it.

(Shown certified copy of the Will—Mr. Wickremanayake objects. Mr. Wickremanayake wants to know on what issue in the case this document is relevant. Mr. Amerasekera says it is relevant to his case. Mr. Wickremanayake points out that this is one of the documents in respect of which inspection was withheld on the basis of the affidavit that it solely relates to his own case and did not impeach any one else's case. Counsel refers to affidavit. He says in view of that affidavit this document cannot be used to cross examine the 1st defendant to impeach the 1st defendant's case. Mr. Amerasekera says it is relevant, to the first issue on the ground of 1st defendant's malicious desertion. He says it is relevant on the issue of adultery. He further says the document relates solely to his own case.

I allow the document to go in).

(Shown Last Will dated 27-10-38 P3).

No. 80
Defendant's
Evidence
Stanley
Alles
Cross-
examination.
continued.

Q. You say you have not read that Will? A. No.
Q. Did you ask your brother at all? A. I am aware of the contents.

Q. Did you ask your brother for a copy of the Will? A. No.

Q. Do you get any benefit under it? A. Yes. I am a legatee.

Q. You obtained a copy yourself? A. I instructed Messrs. Wilson & Kadirgamar to obtain a copy for me but I think the copy is still with them.

Q. Have you been on cordial terms with your brother Reggie?

A. We have had breaks. 10

Q. And certainly there was a break about January, 1940. You were almost in the middle of a break when you were in hospital? A. He went with me to the hospital.

Q. Was there a break in 1940? A. Not so far as I can recollect. He was visiting me and I was visiting him all throughout. When I was operated he came to see me. We were very friendly. In 1941 arising out of my mother's interference in my domestic affairs there was a break. That was in May.

Q. How did your brother come into it? A. I felt that my brother was also in that interference. 20

Q. You felt that it was after consultation with your brother?

A. No I would not say that but he was aware of that.

Q. How was he responsible for her actions? A. I gathered he was aware of my mother's action.

(To Court :

Q. About the 7th or 8th of May your wife wrote to you a letter and said something and you stood by your wife is that the period you are now talking about? A. Yes.

Q. Reggie was on the mother's side? A. Yes).

Q. How did you know he was on your mother's side? A. In consequence of what my wife wrote to me. 30

Q. Have you got that letter? A. No.

Q. Have you preserved any letters written by your wife to you during this period? A. No, I did not know it would be necessary.

(Shown Affidavit).

Q. In that affidavit you say—para. 2b—"the documents in my possession or power relating to the matter in question in the above action are (b) letters written from the plaintiff including letter dated 22-12-41"? A. Yes.

Q. And you say, all the said documents with the exception of the letter of 21-12 you object to their production or inspection on the ground that they relate solely to your case? A. Yes. 40

Q. Where are those letters? A. With my lawyers.

Q. You had not destroyed them? A. No.

Q. So the letters written by the plaintiff to you are with your lawyers and you are not producing them? A. No. But I do not know whether my lawyers propose to produce them.

Q. Why did you tell the court now and on Friday when you were examined that you had destroyed all the letters? A. I was referring to the period while I was in Jaffna.

Q. When you were in Colombo did she write? A. Yes after I left the house.

10 Q. How many letters? A. One or two notes she sent across.

Q. Those are the letters that you referred to, that is letters written after 19-12 including her letter P4? A. Yes.

(To Court :

Q. You destroyed all your wife's letters before you left the house?

A. No, before I left Jaffna. I destroyed them up to the end of August when I left Jaffna.

Q. Why did you preserve those after August? A. I was in Colombo then and there were no letters. In my affidavit I am referring to letters I received after I left the house. I have no letters before that.

20 Q. The earliest letter that you have preserved is the letter of 22-12?

A. I am not sure of the date.

1D5 is the first letter I received from the plaintiff after I left the house on the 19th December. After that she sent me some notes which are with my lawyers. Those notes also relate to matters about this case.

Q. Now you say letters from the plaintiff you object to on the ground that they relate solely to your case, do they relate solely to your case? A. Yes.

Q. How many such chits did she send? A. Two or three. I must have received the first chit after the 22nd December.

80 Q. What was it about, a dhoby account? A. No.

Q. Telling you that the child's clothes or your clothes were being sent? A. No, some frocks sent to the child.

Q. Why should you object to that chit being produced? A. It had nothing to do with her case and I left it with my lawyers.

Q. What has it got to do with your case? How does it relate solely to your case, emphasis on the solely? A. Because it would hardly relate to her case of malicious desertion.

Q. That is not the question, it may not relate to my case how does it relate to your case solely to your case? A. I took up the position
40 that anything I did subsequently with regard to the chits sent by her refer to my case. I did that on the advice of my lawyers.

Q. Anything that does not relate to our case relates to your case then is that your position? A. No answer.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
continued.

Q. You said in examination in chief and in answer to me that you have not got a single letter written by the plaintiff to you in Jaffna?

A. Yes.

Q. I put it to you that when you swore this affidavit you had the letters with you? A. None at all.

Q. Our client says and I am instructed that when you returned from Jaffna the letters were with you in your bag? A. Utterly false and vile.

Q. What is there vile about a husband keeping his wife's letters?

A. Because she was fully aware of the fact that I had no letters. 10

Q. As a matter of fact this is the first occasion in your married life when you have been separated for such a considerable time? A. Yes during my stay in Jaffna.

Q. On every other occasion that you went on circuit you took your wife with you? A. No, on only one occasion to Batticaloa and on that occasion she stayed in the convent there.

Q. Anyhow her company was available to you at Batticaloa?

A. Yes.

Q. Then you went to Jaffna twice on circuit? A. Yes twice.

Q. Up to August 1941? A. That was my third trip. 20

Q. On the occasion of those trips she came to Jaffna? A. She came for a week-end.

Q. Up to the time the trouble arose she had been there once?

A. Yes.

Q. As a matter of fact whenever you left Colombo she was anxious that you should write to her as often as you can? A. Yes.

Q. So much so that when you failed to write she always becomes frantic? A. There was no occasion for me to delay writing. I always replied.

Q. When you were in Jaffna you regularly received letters from her? 30

A. Yes.

Q. Very affectionate letters? A. Yes.

Q. Showing the greatest concern for your health and welfare?

A. Yes.

Q. And you reciprocated the feeling by writing to her frequently?

A. Yes.

Q. If there was by chance any delay on your part to write she immediately wired or wrote to you and asked you why she has not received a letter? A. Probably.

(Shown letter of 20-6-41—Mr. Wickremanayake objects and says that 40 before any document is produced by the plaintiff he is entitled to see it in view of the position taken up. Submits the letter to be produced now is letter dated 20-6-41 long before the alleged malicious desertion, therefore

cannot be a point relating to plaintiff's own case. He refers to section 104 and para. 2 of section 104. He also refers to section 109. I ask Mr. Ameresekere to what point in the case this document is relevant. He says it is relevant to the first issue. He submits this is part of his proof that there was no cause for the 1st defendant to desert the plaintiff.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
continued.

I allow the document to go in).

(Shown letter dated 20-6-41 P4 from the 1st defendant to plaintiff).

I wrote this letter.

Q. You say "Thanks for your letter of yesterday's date.....
10 frantic again"? What do you mean by that? A. I was probably referring to the fact that previously she had asked me why I delayed replying. I did not write daily I wrote twice a week and she wrote about twice a week.

Q. This was not again a hysterical outburst as when you left the house? A. This was in June, 1941.

Q. And you have already said that all through this period you corresponded regularly and hardly three or four days passed without a letter from you to her or from her to you? A. Yes. I left for Jaffna on 1-2-41.

20 Q. And you wrote on the 2nd morning? A. Yes.

Q. You left by the night mail? A. Yes.

Q. You were seen off at the station by whom? A. Plaintiff, her sister Merita and brother Tony and the 2nd defendant.

Q. Did you leave your family in charge of the 2nd defendant? A. Hardly in charge.

Q. How would you more appropriately describe it? A. As a friend I told him to look after them.

Q. And you not only told him to look after them but you asked from your wife as to whether he is looking after them? A. May be
30 I did

(Shown letter of 2-2-41 P5—Mr. Wickremanayake objects—Same order) I wrote this letter.

Q. You say in this letter, "How is Sambo." That is the 2nd defendant? A. Yes.

Q. Then you say I hope he is looking after you all? A. Yes.

Q. What do you mean by that? A. There was no male in the house besides the servant. He was a very good friend of mine and I was hoping he would just drop in sometimes to see that things were alright in the house, that is all.

40 Q. You say there was no man in the house? A. Her brother was there but he was more out than in.

Q. That is why you asked the 2nd defendant to look after the family? A. Yes.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
continued.

Q. You had a brother Reggie did you make that request to him?

A. No.

Q. You had another brother did you make that request to him?

A. No.

Q. You had another brother an Inspector of Police did you make such a request of him? A. He is in Panadura.

Q. Why did you not ask your brother Reggie or Christie? A. There was no need because I trusted my friend.

Q. In preference to your brothers and close relations you had you asked the 2nd defendant to look after your family? A. Yes. 10

Q. And before you went to Jaffna you and your wife had been very closely associated with the 2nd defendant? A. Yes.

Q. In 1940 you used to meet the 2nd defendant at the Galle Face Hotel on Sunday evenings? A. No I think at the G. O. H.

Q. You go there for promenade music? A. We used to go for dancing there.

Q. But you used to go to the G. F. H. for the promenade music? A. Yes.

Q. 2nd defendant was not one of your party at that time? A. No. 20

Q. He used to come there with his friends? A. Yes.

(To Court :

Q. Did the 2nd defendant's wife accompany him? A. No. She never did.

Q. Did he bring his own lady friends? A. Yes, he came in a party).

Mrs. Samahin is a Muslim lady and she does not come to these parties and I have never met her at such parties.

Q. Who generally formed your party? A. In 1940 my wife her sister and Mr. & Mrs. Namasivayam. Mr. & Mrs. Namasivayam resided 30 at Rosemead Place.

(To Court :

Q. 2nd defendant used to be in and out of your house did he come sometimes with his wife? A. He never visited us with his wife. We have called at his house. When we called at his house we met his wife and she used to speak to us.

Q. Did it not strike you as peculiar that 2nd defendant should be in and out of your house and yet not bring his wife? A. I took it for granted that being a Muslim lady she was not getting about.

Q. Did Mrs. Samahin know that you had asked 2nd defendant to 40 keep an eye on your establishment? A. I am not aware).

Q. You never resented the fact that Mrs. Samahin did not visit you? A. No, she being a Muslim lady.

Q. After the promenade music you used to go for dinner to the Fort or Pettah with the 2nd defendant's party? A. No. We met him at the G. O. H. After that we did not go for a feed, not on Sundays.

Q. On week days? A. He used to join us and go direct. He joined us in the bungalow and came direct.

Q. After that you go of course for dancing to the G. O. H.? A. On Sundays but not on week days.

Q. Did you at any time go on week days? A. No.

Q. For dancing 2nd defendant used to accompany you at the hotel?
10 A. Occasionally.

Q. In 1940? A. No. We met him there during that period.

Q. And subsequently you go and dance? A. We met him during the dance.

Q. And you became very friendly? A. Yes.

Q. And subsequently he began to visit you frequently? A. Yes.

Q. He was really your friend? A. I do not know about that he was the friend of all of us.

Q. And come to your house with your full approval? A. Yes.

Q. You had introduced your wife to him in 1937 at Sea View?
20 A. My own belief is she was introduced to him at my operation.

Q. She met the 2nd defendant and you introduced him to her at Sea View the residence of your brother? A. More likely my brother would have done it. My recollection is that she was introduced to him while I was undergoing my operation. Someone had introduced her.

Q. In 1940 July or August you were going out very frequently in the company of the 2nd defendant? A. Not in July, August, must have been about November or the end of October.

Q. How do you place that so precisely? A. It was immediately prior to the baby's birthday.

Q. About July, August, September did you have a good time?
30 A. Only on Sundays.

Q. Going out on Sunday do you call an hectic time? A. I never said I spent a hectic time at any time.

Q. Do you deny the time you spent in December was a hectic time?

A. I do not recollect putting it down to that, that would be an exaggeration.

Q. Do you remember in September 1940 you went to Mannar to prosecute in a particular case? A. Yes.

Q. And you wrote a letter to your wife? A. Yes.

Q. You say in that letter (Mr. Wickremanayake objects—Same
40 order). (Shown letter dated 11-9-40 P6).

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
continued.

Q. You say in this letter "This place is quite deserted and I am the only occupant of the rest house. You can just imagine what that means, particularly after the hectic time and the going we have had recently" What did you mean by that? A. I merely said that bit was terribly dull in Mannar as compared to Colombo.

Q. What did you mean by saying "after the hectic time and going we had recently"? A. We had been getting about a bit that is all.

Q. "Particularly after the hectic time, etc." is not going out only on Sundays? A. To take my memory back it is purely that.

Q. And you had been doing so very frequently? A. No. 10

Q. And at that time you were very closely associated with the 2nd defendant? A. No. We were not going about with the 2nd defendant.

Q. (Mr. Amerasekere says his typed copy is a little different the original letter says this). "You can just imagine what that means particularly after the hectic time our gang has been having recently" Who is your gang? A. That is myself, plaintiff and her sister, Mr. and Mrs. Namasivayam.

Q. Not the second defendant? A. No.

Q. When did he form a member of the gang? A. He began to 20 visit very frequently in November, December, 1940. In September, 1940 he was not one of the gang.

Q. Mr. & Mrs. Namasivayam and the members of your family—this gang—they had a hectic time? A. Yes.

Q. He joined the gang in November? A. Yes.

Q. You were keen to get back from Mannar? A. Naturally.

Q. You made a gigantic effort to get back earlier than expected in October? A. I do not know.

Q. Please read your letter "making a gigantic effort to be back in Colombo earlier than expected? A. Yes. 30

Q. Why was the supreme effort necessary to be back in Colombo? A. I would not like to stay in Mannar for one day out of choice.

Q. Very enervating climate? You say you were "like a run out man"? A. I do not know whether you have been there.

Q. While in Jaffna you wrote to your wife regularly and in your letters you always desired your wife to remember you to the 2nd defendant? A. Quite likely.

Q. You were quite disappointed when the 2nd defendant did not come up to Jaffna and spend a week-end with you? A. Because plaintiff wrote to me that he was threatening to come up. 40

Q. Your recollection of plaintiff's letters is so good perhaps you will oblige the court by saying when she wrote that? A. Now that you brought my mind to bear on it, I certainly remember the plaintiff had written.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
continued.

Q. Was it at the beginning of your stay or later? A. I have no recollection.

Q. What else was written in that particular letter that was written by plaintiff in which she informed you that 2nd defendant was threatening to come over for the week-end? A. I cannot say.

10 Q. Your recollection of the contents of the letters was very good on Friday? A. When my mind is brought to bear on it.

Q. Will you please bring your mind to bear on this matter I am asking you? A. I cannot remember what else was in that letter if you say what it was I might remember it.

Q. She would not have written to you only about the proposed visit of the 2nd defendant? A. No.

Q. She must have said something else? A. Yes.

Q. Did he come and spend the week-end with you before you left?
A. No.

20 (To Court :

Q. You remember your wife coming and staying with the Krishna-ratne's with reference to that when did 2nd defendant say he was coming for the week-end? A. It must have been somewhere about the middle of the year.

Q. Not the time your wife came up? A. No.)

(Shown letter of 7-2-41 P7—Mr. Wickremanayake objects—Same order).

30 Q. "Please ask Sambo when he is coming for that threatened week-end" what do you mean by threatened week-end? A. So far as my recollection goes plaintiff must have written to me that he was thinking of coming up.

Q. You are not sure whether she wrote to you? A. I take it she must have written and that is why I am replying to her.

Q. On 18-2 you wrote to the plaintiff P8 "Please tell Sam I am looking forward to his visit next week-end"? A. Yes that is right.

Q. This week-end never materialised? A. No. I take it he preferred to remain in Colombo.

Q. Why? A. Because he did not come up.

40 Q. There is no other insinuation in your answer? A. I take it because he did not come up to Jaffna he preferred to remain in Colombo.

Q. There is no other suggestion in your answer? A. No.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination.
continued.

(To Court :

Q. One of your allegations is that on 15-2 he had misconducted with your wife and this letter is dated the 18th? A. Yes).

Q. When you wrote on 7-2 the new arrangement had not been made?
A. Which new arrangement.

Q. The letter of the 7th is prior to the 15th? A. Yes.

Q. On 14-2 you asked your wife to come to Jaffna to spend a few days on 28-2? A. Yes.

(Shown P9). "I hope you will be able to come up for the week-end beginning 28-2"? A. Yes I said that. 10

Q. In that letter you saluted 2nd defendant from Jaffna and said what about his week-end? A. Yes.

Q. You have already stated that your relations with your mother and the other members of the family were cordial until May and she had been visiting you, did you visit her for Christmas 1940? A. I think I did so and also for the New Year.

Q. And she returned the visit? A. I think my mother called and we were out.

Q. And did she visit you at all in January, 1941 before you left for Jaffna? A. I do not think she did. 20

Q. Was there any reason why she should not? A. No.

Q. Did you reflect on that fact that she had not visited you in January before you left? A. I do not think I gave the matter any thought.

Q. Till May your relations were cordial? A. Yes.

Q. You seem to recollect very well what your wife writes to you, can you tell us whether she made any complaint about your mother to you about March that year? A. I do not remember.

(Shown letter dated 8-3-41 P10).

Q. You say in that letter "Sam has promised to come up so often and disappointed that I am now beginning to give up hopes altogether. Please do not worry about my mother's doings. All of them are a law unto themselves, they can ride roughshod over everybody's feelings but nobody can dream of doing the same to them"? A. Yes.

(Mr. Wickremanayake objects to P10. I inform him with regard to these documents order will be the same).

Q. Can you say what that refers to? A. Must have been something which my wife wrote to me about what my mother had done.

Q. What is it that your mother had done? A. I do not know, probably something she had taken exception that is why I wrote like that. 40

Q. Do you the writer of that letter now remember what precisely was the complaint she made? A. I cannot.

Q. "They are all a law unto themselves" who are they? A. The other members of my family.

Q. Name them? A. My brothers and sisters.

Q. What was the occasion to involve your brothers and sister in this? A. Probably because she had said something that they had gone to her.

Q. "And they can ride roughshod over everybody else's feelings" had they done so? A. I cannot say.

Q. It is pretty obvious that at this time your wife and mother and 10 brothers and sister were not on the most cordial terms? A. That follows on that letter.

Q. And you were aware of that? A. Yes.

Q. So much so that you wrote to your wife to say "I do not think it necessary to send baby to Laurentem"? A. Yes.

Q. And you also went on to inform your wife "Please tell Lily that mother has not come to our place for this year yet"? A. May be.

Q. Who is Lily? A. Plaintiff's father's sister-in-law.

Q. That is Dr. M. de Costa's wife? A. Yes.

Q. Why tell Lily? A. Probably she had been there.

20 Q. Do not speculate? A. I am not speculating.

(Question repeated). Probably because Lily had said something to her and she had written to me about it.

Q. This state of affairs did not improve between the members of your family and the plaintiff as time proceeded on? A. No.

(To Court :

Q. This is what culminated in the disagreement in May? A. Yes).

(Shown P8 dated 18-2-41).

Q. "We have now become the unwanted but please God a day will 30 come when we will show them a thing or two. We are not asking for mercy now, let them not ask for it when we are dictating our terms"? A. Yes.

Q. Unwanted by whom? A. Probably by my people.

Q. You say a day will come when we will say them a thing or two what did you expect to say them? A. Probably what had happened was my mother or members of the family had said something to plaintiff to which she took objection and wrote to me and I replied and said that taking her side.

Q. What is the thing or two you wanted to say? A. If we got 40 the chance of dictating our own terms that is all.

Q. How did you expect to get this chance of dictating to your mother and brothers. What was the chance you were expecting? A.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination.
continued.

I do not know. I had nothing in my mind at the time I just put that down in my letter never intended that it should be canvassed for any other purpose. I cannot remember what it was that she said in her letter to which I wrote that reply.

Q. What is the day you referred to that you could dictate? A. The wheel of fortune is round and my turn may come.

Q. The Gymkhana first prize? A. May be that or anything else.

(To Court :

Q. Under your father's Will your mother was to be the sole owner?
A. Yes. 10

Q. Did he leave any directions as to who she should dispose of it?
A. No, she could leave it to anybody she liked. She could disinherit me if she wanted.

Q. So it was necessary for you to keep on her side? A. Yes.

Q. Why did you not? A. Because I was taking plaintiff's side against my mother all along.

Q. What was the trouble between her and your mother? A. Whatever differences there were I always felt it was my duty to take the plaintiff's side against my mother).

Q. You considered it your duty in every circumstance to side your 20 wife against your mother? A. Yes.

Q. Without examining the truth or otherwise of the complaints made against her you always took your wife's side? A. Yes.

Q. You never thought it proper to examine what the nature of the matters complained was, whether founded on fact? A. I always considered my mother's complaints in the nature of people of an elderly stage in life who objected to what was happening, but I never for one moment doubted that plaintiff was doing anything that she should not do.

Q. You paid very little regard to any complaint made by your mother? A. Yes, anybody would have made against the plaintiff. 30

Q. Such was your confidence? A. Yes.

Q. And you paid very little regard to any complaint made even against 2nd defendant during the time of your close association with him?
A. No complaint was made against the 2nd defendant to me.

Q. At any time prior to 19-12? A. No.

Q. Even those little discreet inquiries you made from friends did not divulge any reason to take exception to the 2nd defendant? A. It divulged no misconduct.

Q. Those discreet inquiries did not divulge any reason to protest against the coming of 2nd defendant to your house? A. No. 40

Q. On the question of dictatorship you have a cousin called Bertie Alles—J. B. Alles? A. Yes.

Q. And in a letter written to your wife on 31-7-41 P11 you say " You will be surprised to hear that J. B. has got a proctor to send me a letter of demand. This is the man who made a convenience of our house..... I only hope we will be able to get the Galle Gymkhana Governor's Cup, we will then lift our heads and keep everybody in their places? A. I suppose so.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination.
continued.

Q. You were in Colombo in April, 1941? A. Yes. I was in Colombo on the morning of the 9th.

Q. You were met at the station by Mr. Weeresinghe, the Civil Service friend? A. No by a Mr. Markus Silva.

(To Court :

I went to Ratnapura on the 9th. On the 9th evening I left Colombo for Ratnapura).

Q. On the 9th morning you were met at the railway station by Markus Silva? A. Yes.

Q. Is it correct that straight away from the railway station you went to the house of the 2nd defendant? A. Certainly not.

Q. You did some shopping on the 9th? A. No.

Q. On the 10th you did not do any shopping? A. I was at Ratnapura. I did not shop there.

Q. You went I suppose straight to Merlton? A. Yes, dropping in at your (counsel's place) on the way.

Q. Did you find me in? A. Yes.

Q. How did you spend the night? A. I had all my unpacking to do because I brought my luggage down and I had to report to the Attorney General that I was back and in the evening Mr. Weeresinghe called. I did not go out anywhere.

Q. You did not meet anyone except Markus Silva that day? A. No. I left for Ratnapura on the 9th at 5 or 6 in the evening. I left with Mr. Weeresinghe.

Q. You say on your oath that on the 9th you did not meet the 2nd defendant at all? A. I am almost certain that I did not.

Q. So you are not in a position to say so on your oath? A. No recollection of having met him but I am almost certain I did not.

Q. If the second defendant says that he met you on the 9th and called at the house of a certain friend, a mutual friend of yours, would that be correct? A. If I am told the name of the mutual friend and where he met me I might remember it.

Q. I am instructed that you met him at his house in the first instance? A. No. I have no conveyance and I had no way of going there. From the station to Merlton Markus Silva took me in his car.

Q. I am instructed that he called at Merlton on the morning of the 9th? A. That is possible.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination,
continued.

Q. I am instructed that the two of you lunched together? A.
No. I lunched at home. I can deny that.

Q. I am instructed that you went shopping on the 9th, either on the
9th or 10th you called at the Ludowykes? A. No.

Q. Did you call at the Ludowyke's with the 2nd defendant on the
9th? A. No recollection.

Q. Did you call there on the 10th? A. I was in Ratnapura on
the 10th.

I went with Mr. Weeresinghe to Ratnapura because Mr. Krishnaratne
had been transferred as Superintendent there. 10

Q. Had you been invited to spend a holiday there? A. Yes
before Mr. Krishnaratne left Jaffna he said we can come and spend Easter
with him.

Q. You wanted to go there when you left Jaffna? A. Yes.

Q. You intended to spend the week-end there? A. He said just
come over for a couple of days or so if you are in Colombo.

Q. And when you left Jaffna you and Mr. Weeresinghe had arranged
to spend the week-end or a couple of days at Krishnaratne's house?
A. Yes. I believe Mr. Weeresinghe had left Jaffna earlier by car
and I came down by train. 20

Q. And you expected to meet Mr. Weeresinghe the moment you
arrived in Colombo? A. Yes.

He dropped in on the 9th.

Q. And you promptly made arrangements to go? A. Yes.

Q. Before leaving Jaffna did you write to your wife that you were
spending a couple of days at Krishnaratne's at Ratnapura? A. I
have no recollection.

Q. You would have ordinarily written to your wife? A. All I
can say is before I left Jaffna the plaintiff had written to me that she had
occasion to change her room and get into a smaller room because the room 30
she had earlier had been booked by somebody else.

(Previous Evidence put to witness).

Q. Your position is that when you were in Jaffna you had been
invited to spend your week-end with the Krishnaratne's at Ratnapura?

A. In this sense when he was leaving he told us to come down and
see him whenever we happened to be in Colombo.

Q. So that when you left Jaffna you intended to spend the week-end
with Krishnaratne? A. Yes.

Q. You wrote to your wife on the 5 April P12? A. Yes.

Q. You say "I have just received orders that I should continue 40
prosecuting here after the Easter recess. Thank God for that.....
In all probability I will be leaving this on Tuesday by the Night Mail and

will be in Colombo for the holidays." You do not tell your wife there that you were going elsewhere for the week-end? A. No because on the 5th we had made no arrangements.

Q. You were going to spend your holiday in Colombo? A. Yes.

Q. There was no question of your going to Ratnapura? A. No.

Q. Did you proceed to say "If I get a car I will come up and see you in Bandarawela"? A. Yes.

Q. In any event you were not going to live with your wife in Bandarawela? A. No because there was no accommodation there.

10 Q. Did you try to get accommodation outside? A. Why should I, if I am to stay at Bandarawela I should stay with my wife.

Q. If there is no room why should you not stay outside? A. No I did not see the reason why.

Q. The 2nd defendant told you that he had got leave from his department for the week-end? A. No I have no recollection of having met him.

Q. Am I to assume that you did not meet him then? A. I did not see him on the 9th to the best of my recollection.

I reached Bandarawela on the 11th. That was Good Friday. I went to Mrs. Solomon's boarding house. From there I went into the town. I reached Mrs. Solomon's soon after 11.

Q. Had you informed your wife that you were coming? A. Apparently I must have because she had told the servant woman that I was expected.

Q. Your recollection is so good on these matters can you say how you informed your wife? A. She was aware that I was coming for the week-end you have just produced a letter which says if I could have found a car I would come up and see her.

Q. How did she know that you had got the car? A. She knew 30 that I was in Colombo for the week-end anything I did would have been before the Tuesday.

Q. All that she knew was that you were coming for the week-end to Colombo? A. Subject to my getting the car and coming to see her.

Q. You had only from Maundy Thursday to Easter Monday? A. Yes.

Q. How did you communicate the fact that you were coming there on Good Friday morning? A. I did not communicate but in my letter I said if I get a chance I would come up.

Q. You had given her no information as to the date? A. No.

40 Q. But yet you say apparently she expected to meet you that morning because the ayah told you? A. Yes.

Q. You met the 2nd defendant at Bandarawela? A. Yes, on the morning of the 11th.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination.
continued.

I met my wife in the company of Mr. Perumal, second defendant and her sister.

Q. Was 2nd defendant in the car? A. Yes they were all in the car.

Q. And did you have a talk with your wife? A. Yes.

Q. And you also spoke to the 2nd defendant? A. Yes.

Q. Did you not ask him why did you not tell me you were coming to Bandarawela? A. What is more I was told that 2nd defendant had arrived that morning.

Q. Did you not ask why did you not tell me you were coming that morning? A. No because I had no recollection of having met him on the 9th.

I did not wait at Bandarawela even for lunch. No one suggested that I should stay for lunch. Only my wife wanted to know what time I was going back. I said that I was going back for lunch to Bilihuloya Rest House.

Q. Did the 2nd defendant say that you should come to the hotel and have lunch? A. No.

Q. When did you last meet your wife before that day? A. When she came to Jaffna that was on the 4th of March, five weeks previously. 20

Q. Did you offer to give lunch to your wife and sister-in-law? A. She was in a boarding house for which I was paying.

Q. But people keep houses and yet go out and have hectic parties? A. No answer.

(To Court :

Q. Having seen your wife after five weeks did you not like to have a conversation with her? A. Yes I did, I was chatting for 15 to 20 minutes and then Mr. Weeresinghe was anxious to get back. I had to consult his convenience).

Q. Did you suggest to your wife shall we have lunch at Bandarawela? 30
A. No she was going back to the boarding house. The lady in the boarding house told me she was expected back for lunch.

Q. And therefore you did not offer lunch to her? A. No.

Q. Why did you not take her to the Bandarawela Hotel—special occasion, Easter day? A. I was hardly clad for it, I was in a pair of shorts.

Q. Did that matter? A. It did matter I did not want to go to the hotel like looking like a tramp.

Q. So that you did not spend at Bandarawela anything more than a couple of hours that morning? A. Yes. 40

Q. And during those 15 minutes your wife was with the others together? A. No, Mr. Weeresinghe was talking to them and I was talking to my wife.

Q. From there did you go to Welimada for lunch? A. No to Bilihuloya rest house.

I spent the night at Krishnaratne's. That is the 11th. On Saturday the 12th I reached Colombo. From the 12th to Tuesday I was at Merlton.

Q. Did your mother call on you between the 12th and Tuesday? A. No.

Nor did any of my brothers call.

Q. Did the 2nd defendant come? A. No.

After he returned from Bandarawela I met him on Tuesday evening.

10 Q. Did you ask him, was it you that brought that letter? A. He asked me whether I had received it.

Q. There was nothing exceptional in his having brought that letter from your wife? A. Nothing except that she saved the postage.

Q. Which is to your advantage? A. No, hers.

Q. Your birthday was on the 17th? A. Yes.

Q. Did your wife tell you at Bandarawela that she might come for your birthday on the 17th? A. No.

Q. She did not tell you that it may be possible for her to come down with Stanley Fernando? A. No.

20 Q. There was no talk at all about her coming to Colombo? A. No, because she was coming to the end of her holiday on the 22nd.

Q. She had sent you a wire on the 16th? A. On the 16th evening when I went home the wire was waiting for me. I telegraphed back asking if she intended returning to Bandarawela.

Q. What did you say in the wire?

(Mr. Wickremanayake objects. Document in possession of the plaintiff).

Q. I am asking you what you wrote?

(Objection upheld. The telegram is the best evidence).

30 She came on the 17th. She came by train.

Q. Your objection to her coming was on the ground of expense?

A. Yes, and she was returning again to Bandarawela.

Q. She might have come bag and baggage? A. Yes, once for all.

(To Court :

Q. Why did you want to discourage her coming for your birthday?

A. Not that I wanted her to come finally and not to go back again).

Q. And how she did come and one of your objections was to the unnecessary expense she was incurring in coming down? A. Yes.

40 Q. You were very pleased to have her for the birthday? A. Yes, and the child.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination.
continued.

Q. Can you suggest any reason why she wanted to come down?
A. At the moment I only thought it was to be here for my birth-day. But in the light of subsequent events in retrospect it looked as if she was coming to meet the 2nd defendant who had come down by then.

Q. And they did meet? A. Yes on the 17th.

Q. Had they met earlier that day? A. I do not know because I went to work.

Q. You have told us that Montague Jayawickrema was one of the persons who saw you that day? A. Yes.

Q. Mr. & Mrs. Namasivayam were also there? A. Yes. 10

Q. Mr. & Mrs. Namasivayam have been very close friends of yours?
A. Yes.

Q. And you are friendly even now with them? A. I am not angry with them but I am not calling on them.

Q. Why do you not call on them? A. Because I knew this case was pending and I did not wish to embarrass any of my friends by calling on them.

Q. You admit that you have always shown kindness and good-will towards the Namasivayams? A. I would not say good-will. I have been a friend of theirs, that is all. 20

Q. Even when they fell ill and you got information of the illness, you used to call on them? A. Possibly.

Q. Your friendship was such that your wife on one occasion wrote to you and asked you whether you were not in love with Mrs. Namasivayam?

(Mr. Wickremanayake objects. Submits quite irrelevant to the issue. No allegation of adultery by the 1st defendant with another lady.

Mr. Amersekere is heard.

I disallow the question. I think it is irrelevant.

Q. You wrote a letter on 23-4 to your wife—P13? A. Yes.

The reference to Sri is to Namasivayam. 30

Q. You say there "I really cannot understand why you think that I am in love with Mrs. Sri. I think she is an extremely nice sort and I do like her company"? A. Yes.

Q. Why did you put that reference to your love for Mrs. Namasivayam in that letter? A. Probably in reply to a question of hers. Otherwise I would not have made the reference.

Q. Can you tell us what she wrote to you about? A. She was always ragging me about Mrs. Namasivayam.

Q. A joke? A. Yes.

Q. Why? A. She was under the impression that I was very 40 fond of her.

Q. What do you mean by fond? A. That I was in love with her.

Q. Does that explain from her point of view her anxiety to come back from Bandarawela on the 11th? A. No.

After the birthday my wife left for Bandarawela with others on the 18th. The people who left were Mr. Sri Namasivayam.....

Q. They went in his car? A. Yes.

Q. Mrs. Namasivayam did not go? A. No.

Q. Leaving you and your child, Horty in Colombo? A. Yes, the baby was left with Mrs. Namasivayam.

Q. She was to look after the baby? A. Yes, with the ayah.
10 Our ayah was sent across. That is my wife's personal ayah.

Q. That is the night of the 18th April when you took Mrs. Namasivayam to the pictures and had dinner out with her? A. Yes.

Q. Did you say so in the letter? A. That was an arrangement made the same night at the party.

Q. What did Namasivayam say to this? A. It was he who suggested it.

Q. He suggested that he would go with your wife to Bandarawela in his car? A. That plaintiff and 2nd defendant and Mrs. Ludowyke.

Q. And you suggested that you should send your child to his place
20 and you should take out his wife to the pictures and dine her out? A. Yes.

Q. In whose car did you go to the pictures with Mrs. Namasivayam? A. In 2nd defendant's car.

Q. That car broke down near the Maradana bridge? A. It did not break down.

(To Court :

Q. Why was second defendant going to Bandarawela? A. We were all friends.

Q. What about his patients? A. He apparently managed to
30 get leave. It was arranged on the 17th night at the party).

Q. The arrangement was known to everybody and freely talked about? A. Yes.

Q. Mr. Jayawickrama was there? A. Yes.

Q. He was aware that two of the party were going to stay at his place? A. I would not undertake to say what he knows.

Q. So far as you know was he aware that two of this party that were going to Bandarawela was going to spend the night at his bungalow? A. I do not know what he knows.

Q. Did you tell him that two of the party will spend the night at
40 his place? A. No.

Q. Did you on the morning of the 18th draft a telegram for your wife to be sent to Mrs. Jayawickrama? A. No.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination.
continued.

Mrs. Jayawickrama was then staying at Bandarawela.

Q. Did you even dictate a telegram? A. I did not. I did not know that a telegram was being sent.

Q. Miss Ludowyke went up with the party? A. Yes.

I had known her since the beginning of the year.

Q. Her parents were your friends? A. Yes and friends of the 2nd defendant also and known to me through him.

Q. Were the parents your friends? A. Yes.

Q. Did you ask your wife or anybody else who formed the party where that young lady was going to stay the night? A. I was not¹⁰ concerned.

Q. Whose friend was Miss Ludowyke, your wife's or second defendant's? A. Her parents were there and two daughters. I do not know how the party was arranged I only know the upshot of it.

Q. You were only concerned with your side of the arrangement that you should remain in Colombo? A. There was no such arrangement I had to stay in Colombo in any case.

Q. Why was Mr. Namasivayam and 2nd defendant and Miss Ludowyke going up? A. They were going up for a dance.

Q. You were absolutely indifferent? A. No, I knew they were²⁰ going for a dance.

Q. Where? A. I believe a Cup dance at Nuwara Eliya at the Grand Hotel.

Q. You know as a matter of fact that they went to the dance that night? A. It was on Saturday I believe they went to Nuwara Eliya.

I believe they attended the dance on Saturday the 19th. I have no personal knowledge.

My wife came to Colombo on the 20th. (Shown P13). "I hope you received the letter I posted you on Monday.....surely you know I have not the slightest objection to your going anywhere with my friends."³⁰ This is inclusive of the Saturday when she went up for the dance? A. Yes.

Q. Did she give you an account of the trip to Bandarawela? A. She must have said she had a very good time, that is why I wrote like that.

Q. You have no recollection of any statement to that effect? A. No.

Q. Usually she does write to you all that she has done giving an account of everything that happens? A. Not specifically.

Q. It is full enough? A. She just writes to say she has been here and there and so on.⁴⁰

Q. And she apparently asked you for the permission to go for another week-end to Bandarawela? A. She must have.

Q. And you said why need you ask me you can go anywhere with my friends? A. Yes.

Q. There was no question of expense? A. If she was going by car.

Q. Then there is no expense? A. It is not her car.

Q. Your wife never went anywhere without your permission?
A. I am not aware of that. I cannot answer that question.

Q. What is your answer to the question? A. I am only aware of what she wrote to me over and above that what she did I am not aware.

10 (To Court :

Q. At this time you had been how many months away from home, this was 22nd April? A. Four months.

Q. During all that time before your wife went she had asked you for permission? A. No.

(Shown letter of 4-6-41 P14).

Q. You say " I have just received yesterday's letter by all means please do. I have told you time and again not to wait for permission but to go anywhere with my friends " ? A. Yes, that is correct.

Q. So, she does ask your permission? A. Yes.

20 (To Court :

Q. What do you mean by to go about with my friends? A. Going about to pictures or dances.

Q. And you used the plural? A. Yes, friends and not friend).

Q. Among your friends you included the 2nd defendant? A. Naturally.

Q. Would you have objected to your wife going with a friend alone?
A. Where to? If she was going to a party where she meets other people it would be alright.

Luncheon Interval.

30

Sgd. R. F. DIAS,

D. J.

XXD.—(Contd.)

Shown letter of 23rd April P13. You say " I either like or dislike people? A. Yes.

" I do not have many friends but the few friends I have I like to keep " ? A. Yes.

Q. Did your wife suggest that you should not associate with the Namasivayams? A. No. I must have commented that somebody was a good friend or something to that effect.

40 Q. You remembered the Namasivayams in your letters? A. Yes.

Q. In other letters did you say that? A. I do not know that I did.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination.
continued.

Shown letter of 7-2-41 P7. You say "please ring up Mrs. Sri. I made enquiries and was sorry to hear she was ill?" A. Yes.

Q. When was Mrs. Namasivayam's birthday? A. It was at sometime during my first period in Jaffna.

Q. That was about February? A. February, March, April.

Q. Did you send her any telegram? A. Yes.

Q. You wrote to your wife on 18-2-41 P8? A. Yes.

Q. Where you say "I am glad Mrs. Sri got my telegram"? A. Yes.

Q. Did you expect to receive a letter from her? A. I thought¹⁰ she might acknowledge it.

(Mr. Wickramanayake objects—not relevant.

I agree).

Q. Mrs. Namasivayam fell ill about March, 1941? A. I have no recollection.

Q. In your letter to your wife on 11-3-41 P15 you said I am sorry to hear about Mrs. Sri, etc.? A. Yes.

Q. On the 28th April is your sister-in-law (Merita's) birthday? A. Yes.

Q. She had a party in the house? A. So my wife wrote to me.²⁰

Q. For that party your wife said Mr. & Mrs. Namasivayam were invited? A. Yes.

At that party there was a scene created by Mr. Namasivayam.

(To Court :

Q. At this date were you in Jaffna? A. Yes.

Q. This is what you heard? A. Yes.

I disallow the question).

Shown P16 letter dated 1st May, 1941. You sent that letter to your wife? A. Yes.

Q. Can you now recall what the scene is, she described in the letter?³⁰
A. She said there was an argument between Mr. Namasivayam and Mr. Ladislaus Fernando but she was not a witness to it.

(To Court :

This has nothing to do with me and my wife).

(Counsel reads the letter. Did your wife as a result of that letter drop the Namasivayams? She must have done because somewhere then she wrote to me that she had been invited to Bandarawela to come and stay with them along with the baby. That letter is not in your possession?
A. Yes, but I distinctly remember.

Q. Apart from that can you say how long the estrangement was⁴⁰ between your wife and the Namasivayams? In November last Mrs.

Namasivayam rang up the plaintiff and sent her a present. But Mr. Namasivayam was on talking terms with your wife? *A.* I do not know whether they met and when they met whether they talked.

Q. About this June incident are you sure that your wife wrote to you saying she was invited to Bandarawela? *A.* I can't say. It was when the Namasivayams were in Bandarawela.

Shown letter of 28-4-41. "I understood from Sri that his sister was going up with them to Bandarawela, etc."? *A.* Yes.

Q. Prior to this incident on the 28th April that she wrote to you apparently? *A.* Whatever it is it was when the Namasivayams were in Bandarawela.

Q. If the Namasivayams were in Bandarawela on the 28th April how could they have been there on your sister-in-law's birthday? *A.* I do not know. She did write to me about the scene.

Q. You now know that she did not write in June? *A.* It was May-June.

Q. I put it to you that your wife was not in talking terms with the Namasivayams up to the time you left? *A.* All I know is she accepted a present on the 3rd November. I do not know whether she met them or not.

(To Court :

Q. What was the provocation for the present? *A.* It was plaintiff's birthday. The present was set out and she said that she took it round and changed it for something else she preferred. It was some clothing. It was changed at Chandiram).

Q. You wrote a letter to her on the 4-5-41 P18? *A.* Yes.

(Counsel reads the letter). Your wife had written to you that there was a breach between her and the Namasivayams? *A.* Yes. The next thing the gentleman that he was Mr. Namasivayam did was to write and ask you for the return of a loan.....

(Mr. Wickramanayake objects).

Shown letter of 12-5-41. Did you borrow any money from Mrs. Namasivayam? *A.* No.

Shown P19 of 12-5-41. Counsel reads the letter.

(To Court :

Q. What was the cheque about? *A.* That was some money plaintiff had borrowed).

Q. Without your permission? *A.* That was while I was away in Jaffna.

(I inform Counsel that I do not see the relevancy of the cross-examination. It has nothing to do with the main dispute in the case.

Mr. Ameresekere says that when he comes to the proper place the relevancy will become manifest).

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
—continued.

Q. After 28-4-41 I am instructed your wife did not speak to Mr. Namasivayam at all till you left the house? **A.** I do not know that. I was away in Jaffna till August.

Q. You were in Colombo from 22nd August till December? **A.** I did not see them much but on 3rd November Mrs. Namasivayam sent her a present which she accepted.

Q. It was usual for the Namasivayams to call frequently before you left for Jaffna? **A.** Yes.

Q. Did they call at your place formally between August and December? **A.** No. 10

Q. You used to go out frequently with the Namasivayams between August and December? **A.** With Mr. Namasivayam.

Q. After August? **A.** With Mr. & Mrs. Namasivayam.

Q. On no occasion between August and December 19th did you go out with Mrs. Namasivayam when Mr. Namasivayam was not there? Was there any objection to it? **A.** Not that there was any objection but I did not do it.

Q. You told us that from the time you got married you had occasion to borrow money for the maintenance of your house and for personal expenses? **A.** Yes. 20

Q. Your financial position was very bad in 1941? **A.** Yes.

Q. You have had occasion to borrow money from your friends and money lenders in Colombo? **A.** Yes.

Q. When you were acting at Jaffna as Crown Counsel you received several letters from proctors, from your creditors through their respective proctors? **A.** One creditor Mr. J. V. Alles.

Q. One creditor? **A.** That is as far as my recollection goes.

Q. I might remind you that Proctor Mr. Saheed wrote to you on behalf of Abdul Rahim? **A.** Yes.

(Mr. Wickramanayake objects. 30

I ask Counsel how this is relevant.

Mr. Amerasekera says the witness was so hardup that he had to desert his wife and had to go back to his people.

On that ground it is allowed).

Q. On 3-7-41 you wrote letter P21 to plaintiff? **A.** Yes.

Q. Any other letters you received from proctors? **A.** Not as far as my recollection goes.

Q. Did you receive a letter from Wilson & Kadiragamar? **A.** I do not remember.

Q. Had you any occasion to write to Wilson & Kadiragamar in July? **A.** I do not remember it. 40

Shown letter of 21-7-42 P22. " I am writing to Wilson & Kadirgamar today " ? A. I can't remember.

Q. Then J. V. Alles sent a letter to you through a proctor ? A. Yes.

Q. Who is the proctor ? A. Mr. Gomes.

Q. This was for how much ? A. Rs. 1,000.

Q. When people make a convenience of your house do you think they should not send a letter of demand ? A. He could have written to me, he had practically lived in our house. He had previously asked me 10 while I was in Colombo.

Q. After you went to Jaffna no request was made for the repayment of the loan ? A. What is the date of the letter.

He may have asked me in April or so but not immediately before.

Q. You say he had no right to get his proctor to get him to write to you ? A. I did not say that.

Q. Is it improper ? A. Not improper.

Q. Unfriendly ? A. Yes.

Q. He was not paid till you left Merlton ? A. I sent him interest on account.

20 Q. He was paid after you left the house by a cheque issued by your mother ? A. By my brother.

Q. You had a very large number of creditors ? A. Yes.

Q. What was your total liabilities ? A. About Rs. 10,000.

Q. All on cheques and promissory notes ? A. Yes.

Q. You had borrowed money and the return of these loans had become very urgent ? A. No, except one or two.

Q. You had borrowed money from Mrs. D. H. Kotelawela ? Rs. 500 ? A. I borrowed it in 1938.

Q. The money was not repaid till ? A. Part of it was paid in 30 1941 while I was in Jaffna, the balance in 1942.

Q. He got his proctor to write to you ? A. No.

Q. Messrs. de Silva & Mendis did not write to you about this matter ? A. No.

Q. You had borrowed money from Mr. G. G. Ponnambalam ? A. Yes.

Q. The money was paid after December, 1941 ? A. Yes.

(To Court :

Q. How much do you owe today ? A. About Rs. 1,000. Some I paid off before I left Merlton. After I left Merlton about Rs. 8,000 was 40 paid off).

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
—continued.

Q. The whole of the Rs. 8,000 was what you got from your mother or your brother? A. From my brother.

Q. The amount you borrowed from Mr. Kotalawela Rs. 500? A. Yes.

Q. From your friends you had borrowed small sums of money? A. Yes. I did not spend on races. It was all spent on the house. My mother did not give me any allowance from the day I got married.

Q. You did go to the races Mr. Alles? A. Yes.

Q. You were a member of the Turf Club? A. Yes.

Q. You borrowed money from Mr. J. R. Jayawardena? A. Yes. 10

Q. Unpaid as yet? A. I paid it sometime last year.

Q. You borrowed money from F. J. Masilamany? A. That was a petrol account which I am paying by instalments.

Q. About how much was that? A. Rs. 600.

Q. You borrowed money from Marcus Silva? A. Yes.

Q. You have paid him off? A. Yes, before I left the house.

Q. You have borrowed money from Mukthar? A. Yes.

Q. You have also borrowed money from Afghans on cheques? A. Yes.

Q. Large numbers of them? A. Yes. 20

Q. Has that money been paid? A. All paid.

Q. All paid after you left? A. Some I settled before.

Q. Most of them paid after you left? A. Yes.

Q. Then your financial position in December was such that you had to pawn your own engagement ring? A. That was very much earlier.

Q. It was so bad earlier than December that you had to pawn your engagement ring? A. Yes.

Q. Although your financial position was such you did not after your return from Jaffna in August curtail your expenses in anyway? A. My expenses were already down to a minimum. 30

Q. You were still going for dances and promenade music? A. It did not cost very much anyhow.

Q. It cost something? A. Yes.

Q. You did not think you should eliminate that item of expense? A. I was not going as often as before.

Q. Those expenses might have been sufficient to get your ring back? A. About that time it had passed the stage when I was able to get it back.

Q. After you came back the 2nd defendant continued to visit you? A. Yes. 40

Q. And the same cordial relations that existed earlier too yet existed? A. There was no reason for any other.

Q. In the month of September you had no occasion at all to complain to your wife about her going out with anyone? A. I did.

Q. In what month? A. September-October I told her.

Q. Did you do so in September? A. Yes.

Q. What did you tell her? A. I told her she must not go often and leave the child with the servants.

Q. You were thinking of the child and not of anyone else? A. 10 Yes.

Q. What was your precise complaint about her neglecting the child? A. The child was entirely left to be attended to by the servants while she went out.

Q. The servants fed and clothed the child? A. Yes.

Q. Bathed the child? A. Yes.

Q. How old was the child about that time? A. She had just gone beyond 3 years.

Q. You expected your wife to bathe the child, clothe the child, and feed the child? A. She might have done what she had done before 20 to see that she was properly clothed and fed.

Q. And that was your complaint? A. Not after Dr. Wickremasooriya's visit.

Q. Up to the time of Dr. Wickremasooriya's visit that was your complaint? A. Yes.

Q. That was a complaint which could easily have been rectified by your talking to your wife? A. I had.

Q. After Dr. Wickremasooriya's visit what was your complaint? A. My complaint was that Dr. Wickramasooriya's statement somewhat jolted me because she told me in the second half of September that 30 she had missed her periods. Then I made a few discreet enquiries and I found out she had gone out much more than she had stated to me. So I told her for the sake of appearances and to live down the scandal that she should not go about with the 2nd defendant.

Q. What was the scandal you wanted your wife to live down? A. When I made enquiries I found her name coupled with that of the 2nd defendant as having been seen every night at every carnival in Colombo.

That was the first time I heard about it.

Q. That was objectionable? A. Yes.

40 Shown letter of 23 4-41 P14. You did not object to her going anywhere with friends? A. No.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
—continued.

Q. If they had gone with any other man you would not have objected? A. There would have been no comment.

Q. What made the subject matter of comment was their going alone?
A. Arriving and leaving alone.

Q. Will you tell the Court any party which they went to prior to December alone by themselves? A. They had been to the Harbour Lights Carnival. They had been seen at the London Calling Carnival every night till the very early hours of the next morning. Both of them were there together.

Q. Were they seen in a party? A. They were seen arriving together and leaving together alone.

Q. Are you calling any person to speak to that fact? A. No.

Q. She wrote to you saying that she went to London Calling with Dr. & Mrs. C. O. Perera? A. Yes.

Q. That is the letter of 14-2-41 P9? A. Yes. That is what she wrote to me.

Shown letter of 18-2-41 P8.

Q. At the time you received these letters you did not take any exception to her going to London Calling? A. No.

(To Court :

20

Q. She said she went with Dr. & Mrs. C. O. Perera? A. Yes).

Q. Are you in a position to contradict it? A. No.

Q. Who were they who said that she had been seen going and arriving alone with 2nd defendant? A. It was given in perfect confidence and I do not know whether I should disclose them.

Q. You do not wish me to press you to disclose their names? A. I leave it to you Mr. Amerasekera.

Q. They are people whom you can call as witnesses? A. They are people who would rather not give evidence.

(Witness is asked to write the names of his informants. He does so.

At this stage Mr. Amerasekera says he does not want the names).

Q. After Dr. Wickramasooriya spoke to you in November you certainly did not want your wife to go out with the 2nd defendant?
A. Yes.

Q. Will you please tell me whether you talked to 2nd defendant on the subject? A. I talked to him prior to November when I spoke to her about September or October. I told the 2nd defendant that he should not accede to her wishes and take her out because she asked him.

Q. That was about September? A. September-October.

(To Court :

40

Q. What did he say to that? A. He did not say anything at the time but certainly he went out less.

I told him this is the position. She is very fond of gadding about if you do not take her about she will not have a chance of going about).

Q. What was your reason for asking September-October? A. Because she was going about and neglecting the child.

Q. Your friend acceded to your wishes? A. Yes.

Q. Still he continued to come? A. Yes.

Q. After November did you tell 2nd defendant not to go out with the plaintiff? A. I told plaintiff that, so there was no need to tell the 2nd defendant because at that time I did not have anything against the 10 2nd defendant. For me to say that I would have to justify that. I would have to say that he had been behaving badly, otherwise I could not order him out of the house for no reason.

Q. You have just told us that Dr. Wickramasooriya gave you a jolt? A. Yes.

Q. Why did you not tell this man do not take plaintiff out? A. My main task was to have the plaintiff in the house and I had at the back of my mind the fact that the plaintiff was on her back the first six months during her first confinement. But if I told the plaintiff not to go it would be quite sufficient.

20 Q. Why did you not tell your friend? A. Because I did not think it was necessary.

Q. When your other friends told you that there was a scandal why did you not tell the 2nd defendant not to go out with plaintiff? A. There was nothing definite that I had. The scandal was that they were seen out together.

Q. For the good name of the Alleses and your own home did you not think it necessary to speak to 2nd defendant and say do not go out with my wife? A. I thought if I spoke to plaintiff it would be quite sufficient. What I wanted to avoid at that stage was a break with the 30 2nd defendant. All I was concerned was to keep plaintiff in the house. He was still a friend.

Q. In spite of the fact that you heard of the scandal? A. The scandal was that she had been going out. What Dr. Wickramasooriya told me gave rise to a doubt.

Q. If what Dr. Wickramasooriya told you gave rise to a doubt in regard to her fidelity.....? A. At that time I did not doubt the fidelity of my wife because I thought Dr. Wickremasooriya might have made a mistake.

(To Court :

40 Q. If you spoke to the 2nd defendant and if he asked you to divulge your informants were you prepared to do so? A. No.

Q. Had that anything to do with your not questioning him? A. That too).

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
—continued.

Q. Did you think that 2nd defendant was such a dog that he would have come to your house if you had asked him not to do so? A. No. The point is this, that I had no justification to tell him and if I asked him he would have asked me why I did so and then I would have to disclose names.

Q. Even after Dr. Wickremasooriya had spoken to you in November you did not mind the 2nd defendant coming to your house? A. It is difficult to analyse my state of mind at the time. I was in doubt. There was at the time the plaintiff whose fidelity had been questioned and I had doubts in regard to the statement of Dr. Wickremasooriya. 10

Q. You connected the 2nd defendant with the plaintiff? A. No. My position was that the enquiries disclosed that plaintiff and 2nd defendant had been out often. My idea in asking the 2nd defendant not to go with the plaintiff was because I was aware of her condition and I wanted her to live down the scandal.

Q. At that time did you think your wife and 2nd defendant were misconducting themselves? A. No.

Q. Your doubts in November were in regard to the paternity of the child? A. It amounted to that.

Q. Did you regard 2nd defendant as a possible father of the child? 20
A. No; because I did not think there was any misconduct between the parties.

Q. Did you think that your wife had gone out with anybody else during your absence in Jaffna? A. No.

Q. Did you not discuss with 2nd defendant? A. It was a matter I could not discuss even with him.

Q. Yet you went on inviting 2nd defendant to come to your house even after November, 1941? A. Beyond suspicion I had nothing against him.

Q. Dr. Wickremasooriya had seen your wife earlier than November? 30
A. I am not aware of it.

Q. At no time were you aware of it? A. No.

Q. When did you first become aware of it? A. Dr. Wickremasooriya as far as I know first saw her on that day in November.

Q. When did you come to know that Dr. Wickremasooriya saw your wife earlier than November? A. This is the first time I hear of it.

Q. Then in November can you please recollect the date when Dr. Wickremasooriya came? A. It was a Saturday and a race day beyond that I can't recollect.

Q. And on that day Dr. Wickremasooriya gave your wife a prescription? 40
A. I am not aware of it.

Q. Did you not get it dispensed yourself? A. I do not remember it.

Shown prescription P23. I do not recollect it.

Q. It has been dispensed on the 26th? A. Yes.

Q. My instructions are that you dispensed it yourself? A. All that I know is that Dr. Wickremasooriya did not leave a prescription on the day he visited her.

Q. All that you can say is that it was at the end of the month?

A. I can't say that. I looked at the racing calendar and saw the race days were 12, 22 and 29th November. I checked that subsequently.

(To Court :

10 Q. When did you borrow the money? A. That was about the 1st.

Q. Was it after your wife's birthday? A. Yes.

Q. What exactly did Dr. Wickremasooriya tell you? A. He told me that she was in her fifth month.

Q. At once a doubt arose in your mind? A. Because she had told me that in September alone she had not seen her periods and the fifth month from that date I had been in Jaffna.

Q. You say that five months prior to that you were in Jaffna? A. Yes.

20 Q. How would you make this calculation? A. As a layman I worked it back from the months.

Q. Let us know how you worked it back? A. November, October, September, August, July.

Q. Assuming that Dr. Wickremasooriya came on a race day and it was the second race day it would go back to the 22nd July? A. Yes.

(To Court :

Q. Where were you between the 11th and 26th July? A. I was in Jaffna.)

30 Q. Did you ask your wife when she had her last period? A. She had told me she had missed her period in September.

Q. Did you ask her whether she had her period in August? A. No. She said she had not seen her periods in September then when I told her what Dr. Wickremasooriya said she said there must be a mistake.

Q. Did you tell her that according to what Dr. Wickremasooriya says this works back up to the 22nd July? A. That was a question which she could do herself. That is why she said George is making a mistake.

Q. Suppose she had her last menstrual period in the middle of July on the 22nd November she would be really in the fifth month? A. I 40 can't answer the question.

Q. Did you ask Dr. Wickremasooriya how he calculated that your wife was in the fifth month of pregnancy? A. No.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
—continued.

Q. Did you ask Dr. Wickremasooriya when would her last period have been? A. I did not.

Q. You did not discuss the matter at all? A. No.

Q. Did you ask your brother after December how this calculation was made? A. I think I did because he told me something.

Q. Did you ask any other doctor? A. No.

(To Court :

Q. Have you ever prosecuted in an infanticide case? A. No.

Q. Have you had to examine doctors? A. No.

Q. Did you find she was quick with child on the day the doctor examined her? A. All I knew was she was in the fifth month.)

Q. Surely the statement of Dr. Wickremasooriya gave you a jolt? A. Yes.

Q. But you did not try to adjust yourself from the jolt? A. No. I was too stunned to even discuss the matter with Dr. Wickremasooriya.

Q. As a matter of fact Dr. Wickremasooriya must have seen you pale? A. That is for him to answer.

Q. And when you recovered did you ask any of these doctors whom you are now calling in this case whether this statement that she was in the fifth month would be correct? A. I asked. 20

Q. Who are the doctors you have asked? A. I have asked from Dr. Attygalle and Dr. Navaratnam.

Q. When did you ask? A. Some time this year.

Q. That was for the purpose of this case? A. Yes.

Q. That was after you filed answer? A. Yes.

Q. Prior to that you did not seek enlightenment on this point at all from anybody? A. No.

Q. In December the Police dance was on the 5th? A. Yes.

Q. You were invited to form a party by the Namasivayams? A. Yes. 30

Between 22nd or 26th November whatever the date may be and 5th December did you have any discussion with your wife on this question of her pregnancy? A. No.

Q. You accepted her statement as true? A. I did not accept it. I had both statements in mind. That is why I began to make these enquiries after Dr. Wickremasooriya's visit.

Q. Did those discreet enquiries enlighten you in any way? Or dispel your doubts? A. Those enquiries did not bring any elucidation on the question of paternity at all.

Q. This was a very serious matter for you? A. It was. 40

Q. What other steps did you take to ascertain this? A. I still could not get over the fact that was being forced on me that plaintiff had misconducted herself though I was still trying to find out whether this was so or not.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
—continued.

Q. Who was forcing this? A. The enquiries I made revealed that they were going out very frequently.

Q. You had no statement that there was any suspicion of any misconduct? A. The suspicion was the Statement of Dr. Wickremasooriya. Apart from that there was nothing.

10 Q. Apart from this there was no suspicion created in your mind?
A. No.

Q. There was no evidence of undue familiarity between your wife and 2nd defendant? A. When I was there they were very prim and proper. I do not know what happened when I was not there.

Q. You must have been quite distracted about this that this wife whom you trusted so much—implicitly—you had evidence that she was likely to have misbehaved? A. I was worried.

Q. And your best friend's name was associated? A. At that stage I had suspicion and nothing more.

20 Q. You were stunned when Dr. Wickremasooriya made the statement?
A. Yes.

Q. How long did you take to get over the effect of Dr. Wickremasooriya's blow? A. Very long. Dr. Wickremasooriya spoke to me about 5 or 10 minutes and went away and then I discussed the matter with plaintiff. There was a bit of a row also in regard to the other incident.

Q. After your conversation with her you got over the effects of Dr. Wickremasooriya's statement? A. Certainly it was assuaged when she said that Dr. Wickremasooriya was making a mistake.

Q. You took no further steps although you were very worried?
30 A. Yes.

Q. There was no difficulty whatever for you to go and explain to Dr. Wickremasooriya? A. There was this difficulty as far as Dr. Wickremasooriya was concerned. He was an outsider and I did not want to make him think that there was anything wrong and he was an outsider in a matter between me and my wife.

Q. Dr. Wickremasooriya was your family doctor? A. No.

Q. He had attended on your wife on her first confinement?
A. Yes.

Q. You thought it was not possible to discuss with Dr. Wickremasooriya the doubts that had arisen in your mind in regard to the statement?
40 A. Yes.

(To Court :

Q. Who was your family doctor? A. Dr. Frank Gunasekera.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
—continued.

Q. Dr. Wickremasooriya was the gynæcologist who was called in for a special purpose? A. I did not ask Dr. Frank Gunasakera. I felt reluctant to ask him even because I felt reluctant to discuss it with anybody.)

Q. Did you think you should go and ask your brother Reggie? A. We were estranged at that time.

Q. And your mother? A. We were also very estranged.

Q. There was no man in the world in these circumstances for you to discuss this very important matter for you? A. As important as it was delicate. 10

Q. Delicate matters are also discussed? A. Yes.

Q. There was not one man or woman in this world in whom you could have confided? A. No.

Q. But you still continued to invite Dr. Samahin? A. I did not invite him but he continued to come.

Q. Did you treat him with great cordiality? A. I would not say that because at that time when he came to the house I always was in the office room.

Q. Was it noticeable? A. So noticeable that even the plaintiff commented on it. 20

Q. Why did you not ask him not to come to the house? A. I had nothing to suspect him.

Q. Was it not sufficient that the fact the scandal existed to ask him not to step into the house? A. I also had to consider plaintiff's reactions to it.

Q. Had you not the guts to keep the man out of the house? A. I had no justification. There was a scandal much earlier and I had done nothing about it; but I also had to consider plaintiff's reaction to it.

Q. On 5th December 2nd defendant went out with your wife? A. Yes. 30

Q. On the night of the 19th, 2nd defendant was your guest for dinner? A. He was not invited by me.

Q. He had a few drinks with you? A. No.

Q. You sat together and dined together? A. Yes.

Q. You did not run away from dinner? A. No.

Q. You did not call in your dinner to the office table? A. No.

(To Court :

Q. On 19th December had you made up your mind that plaintiff and 2nd defendant had misconducted themselves? A. I had only suspicions and nothing more even at that stage. At the most it was a 40 case of suspicion.

Q. And on the 19th December you wanted the 2nd defendant to take the plaintiff away that night? A. I never suggested at any time that plaintiff should go with the 2nd defendant.

Q. That was what you hoped would happen? A. She had told me earlier that her brother was taking her away. She had told me on my return.

Q. Do I understand that 2nd defendant came and sat to dinner at your house? A. 2nd defendant came that evening and said he had come there and had to go to make some arrangements at the Galle Face Hotel. I did not ask him to stay. Probably the plaintiff asked him to stay.

Q. Why did you sit down to dinner with him? A. I also had to have my dinner.

Q. Could you not plead indisposition? A. I did not want to do anything that would deter her from going in the day because at that time I had made up my mind that there must be a definite break.)

Q. He was still Sam and Sambo at that time? A. I called him Sam not Sambo.

Q. The brother you referred to was Noel de Costa? Yes.

20 Q. He was there for dinner? A. Yes.

Q. He went out with your wife, her sister Merita? A. Mr. Noel de Costa took Miss Ludowyke and his sister Merita. In the other car was Mrs. Ludowyke the other Miss Ludowyke and my wife and 2nd defendant. I gave my wife Rs. 10 for a ticket.

Q. You said "Good night Sambo have a good time"? A. I do not remember saying that.

Q. Would you contradict Dr. Samahin if he says so? A. I certainly would not.

30 Q. On the day Dr. Wickremasooriya came the Ludowykes called on you? A. Yes, that same night.

Q. When the Ludowykes came Jane was in very great pain? A. Yes.

Q. As a result of what? A. Garlic in the ear.

Q. On the advice of your wife? A. Yes.

Q. Did your wife instruct in regard to the actual depth? A. I was not there when plaintiff instructed.

Q. Anyway you blamed your wife for instructing her to put garlic in the ear? A. I blamed her for not instructing properly how she was to do it.

40 Q. Is it necessary to instruct a Sinhalese girl to put garlic into the ear? A. Apparently it was necessary in this case.

Q. Are not these home remedies which we are all familiar with? A. May be.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
—continued.

Q. These are all little home remedies which we all know? (No answer).

Q. Do you know that garlic was good for earache? A. I did not know.

Q. I understand that you put a piece of garlic in your wife's ear on the day of your honeymoon? A. No, I did not.

Q. What was the occasion for you to blame your wife because she had put it too deep? A. Because I had to cart her to the O. P. D.

Q. You were also inconvenienced? A. Yes, and I also had at the back of my mind what Dr. Wickremasooriya said. 10

Q. You had not accepted her explanation? A. Yes, there was a state of doubt.

Q. There was an outburst? A. Yes.

Q. What did you tell your wife in the course of the outburst? A. I said the remedy she suggested had not been properly applied.

Q. Can you remember what was the language? A. I found fault with her. I did not use any foul language.

Q. You can't recall what language you might have used? A. No.

Q. You blamed her? A. Yes.

Q. There was nothing very objectionable in what you said? A. 20
No.

Q. The Ludowykes came while you were in the midst of this discussion? A. Yes.

Q. Mr. Ludowyke offered to come to the hospital with you? A. Yes.

Q. You got into Mr. Ludowyke's car and took Jane to the hospital? A. Yes.

Q. She was attended there? A. She was not attended to. She was very obstinate. It was suggested that she was to be brought the next day to remove it under an anæsthetic. 30

Q. She was inconsolable? A. Yes, she was howling.

Q. The more she howled the more angry you became? (No answer).

Q. The following day she was attended to? A. I think so.

Q. Your recollection is becoming dimmer and dimmer? A. My recollection of that incident, I know she was taken to hospital.

Q. Is it not the fact that Dr. Samahin administered the anæsthetic? A. No. I sent her with a letter. I do not know whether Dr. Samahin did anything over and above that I do not know.

Q. To whom did you send the letter? A. To the doctor in charge of the O. P. D. 40

Q. You made this request to Dr. Samahin within a few hours of your getting this most astounding information about the condition of your wife? A. Yes.

Q. After you returned with Jane you went to dinner with the Ludowykes? You had invited the Ludowykes for dinner? A. No.

Q. They stayed for dinner? A. Yes.

Q. It is not unusual for your friends when they come to be asked to stay for dinner? A. Yes.

Q. Did your wife not sit down for dinner with the Ludowykes?
A. She did not. She got hysterical and she had to be taken to her room by Mrs. Ludowyke. I did not get hysterical.

Q. You had an outburst she went one better and went hysterical?
10 No answer.

Q. She became hysterical because you scolded her? A. Yes.

Q. She had to be taken to the room by Mrs. Ludowyke? A. Mrs. Ludowyke took her.

Q. Did you try and comfort her? A. I left her severely alone because Mrs. Ludowyke was there.

Q. You thought Mrs. Ludowyke would perform that function better?
No answer.

Q. You did not go to her room? A. I saw her in bed.

Q. The following morning did you discuss the matter again after
20 the Ludowykes left? A. No.

Q. Did you say that you were very sorry that you scolded her?
A. No.

Q. There was no need you thought to give any explanation? A.
Yes.

Q. Why? A. There was no need.

Q. Why was there no need—you knew her condition—you did not think that you should try to comfort her in some way? A. No.

Q. Had you become quite callous to her feelings? A. I thought she was better left alone

30 Q. You got on as well as you used to? A. Yes.

Q. Ordinarily do you get invitations yourself for the Police dance?
A. No.

Q. When the Namasivayams invited you to form a party was it suggested that your wife should be included in that party? A. Yes.

Q. Your wife's condition was known to your friends? A. Not very visible.

Q. She could go to a dance? A. I suppose she could and she did.

Q. Was the fact of her pregnancy known to the Namasivayams?
A. Yes.

40 Q. Did they suggest that your wife should be one of the party?
A. Yes.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
—continued.

Q. Without consulting her you said she could not come? A. Yes.

Q. You did not consult her at all? A. I took it upon myself to refuse.

Q. Why? A. Because she was in that condition and also I had told her earlier that she must stay at home and not go about with the 2nd defendant.

Q. For two reasons—one was to look after the child and the other was to live down the scandal—is that so? A. I did not want her to go about with the 2nd defendant.

Q. One was that she should look after your child and the other was to live down the scandal? A. I also had the fact at the back of my mind that she was on her back for six months during the first confinement. She had continuous hæmorrhage.

Q. It was not hæmorrhage in November? A. She did not tell me.

Q. If she had you would have known because you would have had to call the doctor and foot the bill? A. Yes.

Q. When did you know that your wife was likely to go to the Police dance? A. There was no question of my knowing it at all.

Q. In fact you were not concerned whether she went or not? A. 20 As far as I was concerned she was not going.

Q. As far as you know when did you first know she was making preparations to go to the Police dance? A. I did not know at all.

(To Court :

Q. When did you go and remove the plaintiff from Mrs. Walles?
A. On the 5th morning. She did that because I was going to the Police dance.)

Q. Who was present when that discussion took place in the house?
A. There was no one in the house.

Q. What did your wife say—she expressed a desire to go to the dance?
A. Yes.

Q. Did you tell in her present condition she should not go to the dance?
A. Yes.

Q. Did you do so gently? A. I was not harsh at all.

Q. You having decided that she should not go you decided to go?
A. Yes.

Q. Why did you decide to go to a dance to which your wife was not going?
A. For this reason. I thought she should not go for the dance. She was not going as far as I was concerned.

Q. Why did you not say "I will stay with you at home"? A. 40 This was one of the few occasions I was going out and I was determined to go.

Q. In fact your wife had told you not to go with the Namasivayams for the dance? A. No.

Q. You told her that you were going with the Namasivayams? A. No. 30
 Yes. Defendant's
 Evidence

Q. She asked you not to go with the Namasivayams? A. On 30
 the contrary she asked me to go. Stanley
 Alles

Q. And after that she left the house for the Walles'? A. Yes. Cross-
 examination

Q. She gave you permission to go to the dance and she left the
 house? A. The explanation you must ask her. —continued.

Q. Did you not write to your wife to say us early as May "The best
 thing is to drop the Namasivayams and carry on without them"? A.
 10 Yes.

Q. In spite of that you wanted to go to the dance with the Namasi-
 vayams? A. Yes.

Q. You yourself went in the afternoon and brought your wife home?
 A. Yes.

Q. You went with Mr. Martin Silva? A. Yes.

Q. How did you persuade your wife to come back to the house?
 A. I went there and she was with her aunt and cousin and I asked her
 to come home and she came back.

Q. There was no discussion about the difference you had in the
 20 morning? A. No.

Q. And very tamely this wife of yours got back into the car and
 was driven home? A. Yes.

Q. There was no discussion at all about the dance after that? A.
 No. Because she went and retired immediately I brought her home.

Q. Did she after she came back ask you not to go to the dance with
 the Namasivayams? A. Not once.

Q. On no occasion did she tell you on that day not to go to the
 dance with the Namasivayams? A. No.

Q. Did she have any tickets for the Police dance? A. I am not
 30 aware.

Q. Did you go into the room and speak to her after she retired?
 A. After a little while she came back and sat in the verandah.

Q. Did you then discuss with her the question of going to the dance?
 A. No.

Q. The next thing was you ordered your dinner? A. Yes.

Q. The Namasivayams came for you in the car? A. Yes.

Q. They did not get down? A. No.

Q. You jumped into the car and went off? A. Yes.

(To Court :

40 Q. Did you and she have dinner together that night? A. Yes.

Q. At that time were you dressed? A. No. I dressed after
 dinner.)

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
—continued.

Q. The 2nd defendant too had dinner with you? A. No.

Q. At the time you dined she was in her home clothes? A. Yes.

Q. Had she dressed for a dance? A. No.

I had my dinner and got into my evening clothes. When I left the house she was sitting in the house in a house coat.)

Q. Before you left for the dance did you tell your wife to come to the dance? A. Certainly not.

Q. Did 2nd defendant come there at all on the evening of the 5th?

A. I can't remember but he certainly was not there when I left.

Q. It was a surprise to you when you met your wife at the dance? 10

A. Yes.

Q. And of course you did not discuss the matter with her because you did not want to create a scene? A. Yes.

Q. Did you dance with your wife? A. Yes.

Q. Did you have four dances with your wife? A. May be as much as four.

Q. The usual number is one or two—more than usual? A. That is utterly false.

Q. How many dances usually did you give your wife each night?

A. Each night. 20

Q. When you go to a dance how many times did you dance with her? A. I dance with her as many times as I dance with others.

Q. I am told that you do not go through the whole programme yourself? A. Nobody does.

Q. But in your case I am told that there was a special reason. You have an infirmity I am told? A. I freely admit I have an infirmity.

Q. I am told that because of the infirmity you do not take as many dances as the others go through? A. Yes.

Q. On this night you gave your wife as many as four dances? A. Yes. 30

Q. Did you dance with those who formed your party? A. Yes.

Q. About how many dances did you sit out? A. There was no sitting out space.

Q. Your wife left the dance hall much earlier than yourself? A. Yes. She did, but I did not notice her leaving.

Q. And you came home in the early hours of the morning? A. Yes.

Q. You came home about 5 o'clock? A. I was home by 3-30 a.m.

Q. And your wife was at home when you returned? A. Yes.

(To Court :

40

Q. Whom did she come to the dance with? A. 2nd defendant.

Q. And she left with? A. I did not see her leaving.)

Q. And you had no conversation? A. We had a discussion. I asked her why she went with 2nd defendant. I woke her and asked her. I asked her why she left the house and attended the dance when I had asked her not to go, then she said she will go where she liked with whom she liked and when she liked and she was not going to take my orders. I had given orders that she was not to go out after Dr. Wickremasooriya came. I was angry.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
—continued.

Q. Did you discuss it again with the lady next morning? A. I had nothing to discuss after what she had said. My enquiries had disclosed that she had gone about to all these places with 2nd defendant.

Q. After that statement was made by your wife you did not think it necessary to speak to the 2nd defendant and ask him not to take your wife out? A. I had told him earlier that was prior to Dr. Wickremasooriya's visit.

Q. Taking your wife out on the 5th December was in spite of your own expressed wishes to the 2nd defendant? A. Yes.

Q. Yet you allowed the 2nd defendant to come to the house after the 5th?

(To Court :

Q. Did you know how the 2nd defendant came to your house on the 5th December. You know how they communicated with each other? A. Probably by telephone.)

Q. On the 5th December had you charged your wife with infidelity? A. No. It was only a suspicion and a matter of doubt at that stage and nothing more.

Q. After the 5th December the 2nd defendant continued to visit your house? A. Yes.

Q. Why did you allow that? There was a man who takes your wife in spite of your expressed wishes—why did you allow him to come? A. I knew he was dominated by her.

Q. Was it your house or her house? A. It was her father's house.

Q. Your position was subordinate to her? A. In that sense. My position was that I had also to consider the plaintiff's reactions to anything I might tell 2nd defendant because she might have got more obstinate.

Q. In fact every day you hoped to bring round your wife? A. Yes.

Q. What did you do to achieve that object? A. That was why I told her that she should stay in and not go out.

(To Court :

Q. On the 7th she went to the Silver Wings' Carnival, did you not then think it time to take steps? A. By that time I had come to the

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
—continued.

conclusion that nothing would bring plaintiff about that any step would be futile.

Q. Why did you not have the satisfaction of giving 2nd defendant a horse whipping? A. He had only done something which I had asked my wife not to do. I had no evidence.

Q. You do not require evidence in these domestic matters? A. Lawyers sometimes do.

Q. You referred to 2nd defendant in particular and asked not to go with him? A. Yes.

Counsel reads previous evidence. No reference was made to 2nd defendant by her in her reply.

Q. You say that this question was whether she made any reference to the 2nd defendant? A. That is how I understood it.

Q. After that came the Silver Wings Carnival? A. Yes.

Q. You yourself went A. Yes, on the Sunday I did.

Q. Why did you not take your wife for that? A. For the same reason that she should not be seen in public in that state. There was far too much talk about her so the less she was seen the better.

Q. Why were you not adopting the one simple and obvious remedy of asking the 2nd defendant not to go out with your wife? A. I told 20 him that.

Q. Why did you not take him to task? A. Because I had to consider the plaintiff's reaction to anything I said to the 2nd defendant.

Q. What did you think her reactions would be? A. She would be more obstinate.

Q. If Samahin did not come your object would have been partially obtained? With whom did you go to the carnival? A. With the Namasivayams.

Q. And with whom did she come? A. With the 2nd defendant later. 30

Q. Any dancing on that night? A. I think there was a dance hall.

Q. Besides dancing there are other attractions and distractions there? A. Yes.

Q. Did your wife ask you not to go with the Namasivayams? A. No, she did not at any time, not that day or any day.

Q. Did the 2nd defendant invite you to come with him to the carnival? A. No.

Q. Did you not say that you were not going to the carnival at all that night? A. No. 40

Q. When you left for the Silver Wings Carnival had 2nd defendant come to your house? A. No. He came there earlier in the morning that was a Sunday. He came there dropped in and went away.

Q. Did you not think it wise to tell him " My wife's name is coupled with your name, I know there is nothing about it but it is better for you not to see her for some time " ? A. But I was concerned about her reactions to my saying that. I had spoken to 2nd defendant and plaintiff persisted.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
—continued.

Q. And when a man persisted in doing what you objected to ? A. I feared a scene because that is what I wanted to avoid. I wanted to be certain before ordering him out of the house. I could not act on suspicion. I did not expect a recurrence of it after I spoke to the plaintiff on the 6th.
10 There was no question of my taking a horse whip in plaintiff's father's house so I decided to leave the place.

Q. When did you decide that ? A. Some time after the 7th.

Q. You decided to leave the house by yourself ? A. With my child.

Q. How long after the 7th was that ? A. By about the 14th, I had arrived at that decision.

Q. It took you one week ? A. It was a serious step.

Q. In fact you were giving more thought to your leaving than bringing about your wife ? A. There was no question of that happening
20 because during that week too she went out with the 2nd defendant and there were right royal rows about it. On the 14th I had come to the decision that a step had to be taken.

Q. From the 7th to the 14th when you had decided to leave the house had you talked to the 2nd defendant ? A. I realised it was useless.

Q. What reason had you to think that any conversation with 2nd defendant would be useless ? A. Because they persisted in doing the one thing I did not want them to do.

Q. During that week where did they go ? A. They went out to
30 the Ludowykes they went to see friends.

Q. Can you name the friends ? A. Mrs. and Miss Ludowykes. Mr. & Mrs. Hilary de Silva.

Q. On no occasion did you go with them ? A. Not during that period or any time after the 22nd did I go out with them.

Q. That was between the 7th and 14th ? A. Yes, they were going out.

Sgd. R. F. DIAS,
D. J.

For want of time case postponed for tomorrow.

Sgd. R. F. DIAS,
D. J.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
—continued.

15th December, 1942.

Counsel as before.

STANLEY ALLES—Sworn.

Q. You are aware that your wife was ill in July, 1941? A. Yes.

(To Court

Q. Ill with what? 2nd defendant wrote to me that she was ill with kidney trouble.

Q. You did not keep that letter? A. No.)

Q. Is that all that is said in that letter? A. No. He suggested that I should come down for the next week end. 10

Q. That would be a natural suggestion, didn't you think? A. At that time I thought it was a natural suggestion.

Q. At this time? A. I think that they thought it convenient to get me down.

Q. You do not suggest that he or they wanted to make a convenience of you? A. I now realise that conception must have taken place somewhere in June or July.

Q. And they wanted you down for what purpose? A. So that I would not be able to raise the question of non-access.

Q. When did you come to realise that that was 2nd defendant's 20 object in writing that letter to you? A. Recently after this case was filed.

Q. How did you learn that conception must have taken place prior to July? A. I was so advised.

(To Court :

Q. Did you study the terms of section 12 of the Evidence Ordinance as a lawyer? A. Yes.

Q. That section says 280 days and have you worked it back? A. Yes it took me to 19th June.)

(Shown P24 letter dated 11-7-41). This is my letter. 30

Q. You say here " I am terribly sorry to hear you are ill with renal colic? A. It is correct.

From whom did you get that information? A. From the 2nd defendant.

Q. " Please get Dr. Frank to see you daily " ? A. Yes I refer there to Dr. Frank Gunasekera.

(To Court :

Q. That letter supports your story that the 2nd defendant wrote to you? A. Yes.

Q. Then you say " See that I am informed how you are ". How did you expect to be informed? A. Her sister was there.

Q. At that time you had no objection if 2nd defendant informed you? A. None whatever.

Q. " Please thank Sam ever too much for his letter of information." Did that letter contain anything more than the information that she was suffering from renal colic? A. Yes it did.

Q. Your recollection is very vivid? A. Because in my reply I told him it was not possible for me to come down the following week end as I had already applied for leave to come down for the Governor's Cup day week end.

Q. Would you not cancel the Governor's Cup day and come for the illness of your wife? A. If it was so urgent I certainly would have come down.

Q. Urgent enough to make excuses and say that your work did not permit you to come? A. Perfectly true.

Q. And you furthermore say it is really very kind of him to have taken the trouble to write? A. Yes.

Q. Did you write to Dr. Frank Gunasekera and inquire how your wife was? A. No.

Q. Did you telephone to him? A. No.

Q. Did you subsequently see the doctor to find out what was wrong with your wife? A. No, because plaintiff herself told me what was wrong.

Q. And you were satisfied that she was down with renal colic? A. That she had renal colic I do not doubt it for a moment.

Q. Is it possible that Dr. Samahin would have intended to entice you to Colombo with the object of getting the two of you together?

(Mr. Wickremanayake objects. I think the objection should be upheld.)

(To Court :

Q. Do you know whether a person having renal colic could have sexual intercourse? A. I do not know.)

Q. You have not sought advice on that point? A. No.

Q. Renal colic is a trouble of the kidneys? A. Yes.

Q. And it is very painful? A. I do not know. I am told it is so.

Q. Since when did you learn that? A. Plaintiff herself told me.

Q. Till plaintiff told you, you did not know it was painful? A. No.

40 (Shown letter of 15-7-41 P25). I wrote this letter.

Q. Did she wire to you? A. I am replying to a letter of plaintiff written in pencil.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
—continued.

Q. It is a question of your knowledge which you were communicating to her? A. No.

Q. You knew it was a very painful thing? A. She told me with the passing of the stone she felt relieved.

Q. Did you ever hear of renal colic till you were told about it? A. No.

Q. Who used the word renal colic? A. She did in her letter.

Q. Then you say "I was very worried when I got Sam's letter. That is why I rang you up on Friday"? A. Yes it is quite likely I did.

Q. You told us 'your relations with your mother were very strained 10 from about the beginning of 1941.

(I point out to Counsel that he is misrepresenting the evidence. The evidence is that relations were cordial till May.)

Q. You also said at one time your mother visited you up to the end of March? A. It could not be up to the end of March because I was not here in March. What I wanted to convey was that she visited me before I left for Jaffna.

Q. Up to about May you say your relations with your mother were rather strained? A. Subsequent to my writing the letter they were definitely strained. 20

Q. Prior to that? A. According to my correspondence they were strained. I could only speak to the fact that to the best of my recollections she had come before I left for Jaffna.

(Shown letter of 20-2-41 P26) I wrote this letter.

Q. You say you have always known your mother to be an interfering busy body? A. Yes.

Q. "I have always warned you not to give her an opportunity to talk about you. Tell Sam not to worry about all this talk which seems to have re-started since I left Colombo." What is that talk about? A. Apparently she had written to me that there was talk about herself and 30 2nd defendant.

Q. You wanted her to inform the 2nd defendant not to worry about it? A. Yes.

Q. You paid not the slightest attention to your mother's complaint because she was a busy body? A. My mother's complaint was made apparently to the plaintiff and not to me.

Q. But you called her a busy body and not the plaintiff and that is your reason for paying no regard to what your mother told the plaintiff? A. I also said that I warn her not to give her the opportunity to talk about plaintiff. 40

Q. You say "it seems to have re-started since I left Colombo". Was there talk before you left? A. There must have been for me to make that statement.

Q. Did you take any steps at that time? A. Because I had implicit faith in plaintiff and 2nd defendant I did not.

Q. And that continued while you were in Jaffna? A. Yes.

Q. You further say "Tell Dan not to worry about our future? Who is "Dan"? A. Plaintiff's father.

Q. Why did you say that? A. I suppose she must have written to me that he had come and said something or tried to do something.

Q. "Why worry about the future"? A. She must have referred to it in her letter.

10 Q. Did it also refer to this talk? A. Apparently not. It is in connection with something else that I have written that.

Q. In connection with what? A. It could not have been in connection with the talk.

Q. You cannot say in connection with what you made that statement? A. No.

Q. You say at the bottom of the letter "I have heard nothing about you nor have I received any anonymous letters"? A. Perfectly true.

Q. What is that? A. She probably suggested that I had received anonymous letters.

20 Q. What is your recollection. What was the subject of the anonymous letters? A. I cannot say.

(Shown letter P10). She must have made some complaint about her mother.

Q. In all these letters you are replying to something she had been writing to you? A. Yes invariably.

Q. In April you were back here in Colombo? A. Yes. I was in Colombo for the Easter vacation except when I was away in Ratnapura.

Q. And your mother visited you at Merlton during that holiday? A. Yes. That was on the 19th.

30 Q. You remember the date definitely? A. Yes. I had lunch with her that afternoon and went to Jaffna that night.

Q. What was the purport of her visit to you? A. She came and told me something.

Q. That was so far as you were aware the first visit she paid you that year. A. I have already said that she had come in January.

Q. This was the first call your mother made in 1941? A. Yes.

Q. Did you as a dutiful husband communicate this fact to your wife? A. No.

(To Court :

40 Q. At the date your mother came and lunched with you.....? A. I lunched with her.

Q. Where was your wife then? A. She had gone to Bandara-wela.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
---continued.

Q. Did you communicate what your mother said to her? A. No.

Q. Or even the fact of her visit? A. I do not think so.)

Q. But about August the same year you asked the plaintiff to execute a certain commission for you? A. May be I do not know what it is.

(Shown letter of 15-8- P27). I wrote this letter.

Q. " Since writing overleaf I have received your letter of yesterday's date. I really fail to see why I am being blamed for everybody's nonsense..... It was only recently I wrote to him a nice letter. Mother did come and see me when I was down..... Mother never told me to give you up and come and live with her. I really fail to see what my domestic 10 affairs have to do with my job unless they want to blame me for the gossip in Colombo ". Apparently she communicated some information from some gentleman whose name is mentioned there? A. Yes.

Q. She blamed you for not informing her of the visit of your mother and the purport of the conversation? A. Not necessarily blamed. She may have asked me why I had not mentioned it.

Q. Why did you not mention it? A. Because I thought that it was perfectly unnecessary. I had the greatest faith in her and in my friend.

Q. You did not want to believe what your mother said? A. I 20 go even further and say I resented it.

Q. And you made her understand that you did resent the statement she made? A. No, that does not necessarily follow, I just ignored it.

Q. Even subsequent to that your mother paid a visit to your wife at Merlton? A. She told me so.

Q. In May? A. Yes.

Q. On that very day you happened to telephone to your wife? A. Yes.

Q. Your wife told you all that happened on the telephone? A. No. Not all, she said that mother had called. 30

Q. Gist of the conversation? A. Yes.

Q. She was actually crying at the time? A. I do not know that.

Q. You could not see but from the conversation you could gather that she was crying? A. No.

Q. You then wrote to her the letter of 9-5-41? A. Yes.

(Shown P28 of 9-5-41.)

Q. You say " I am very sorry mother behaved in the way she did " how did she describe it? A. She said that mother had come and scolded her for something. The reference to "her eldest son" is to Reggie.

Q. " He is now becoming the keeper of other people's morals besides 40 his own " ? A. Yes I have said so.

Q. In this letter you say you are writing to your mother, have you got that letter? I wanted to produce it, it was objected to.

Q. Where is that letter? It is with my mother.

Q. Did you receive a reply to that letter? A. Yes.

Q. Now by this time that by May, 1941, I would be correct in saying that your relations with your people were very strained? A. Yes.

(To Court :

Q. That is what you meant by saying that in May relations became strained? A. Yes.

Q. You said earlier that between the 7th and 8th May plaintiff wrote to you and made a complaint against your mother and also tele-
10 phoned and you wrote to your mother, that is the incident you are talking about? A. Yes.)

Q. On the 16th June you wrote to your wife P29? A. Yes.

Q. You say, please don't ask anyone from Laurantem or Lisay. Who is Lisay? A. That is Marcelline de Costa.

Q. Why did you say that? A. She may have written to me saying that her brother had cooled off.

Q. Nor did you want her brother to be invited? A. Yes.

Q. In the same letter you say "Your brother thinks you are both fit enough to be seen with him at public dances, who are the both? A.
20 What I meant to say there was not fit enough. One of plaintiff's complaint was that after her brother's return that he took neither herself nor her sister out for dances and apparently on this occasion he had done so.

(Shown letter of 19.6.41 P30.)

Q. You say "I hope I will be able to leave Colombo for Horty's birthday"? A. Yes. That was the birthday of 30-6.

Q. Up to the time of your return from Jaffna to Colombo these were the relations between you and your family? A. Yes.

Q. And they continued to be so while you were in Colombo till December? A. No.

30 Q. When did you resume the old relationship? A. Somewhere in September, late September I went to see my mother and went with her to see Mr. E. G. P. Jayetilleke who was then Attorney-General.

Q. After that did you call at Laurentem? A. I used to with my brother on his way to work. That is my brother Christy.

Q. But with your mother and eldest brother Reggie had you no communication between August and early December? A. I used to drop in there on my way to work occasionally with Christy.

(To Court :

Q. What was the reason for going to see the Attorney-General?
40 A. It was in connection with my post in the department. Nothing to do with this matter).

No. 80
Defendant's
Evidence
Stanley
Alles
Cross-
examination
—continued.

(To Court :

Q. Relations being what they were how did this sudden friendship with your mother again start? A. It was no question of friendship at all, neither my child nor plaintiff went there.

Q. All these letters show that the relations between mother and son were not too good then suddenly in September she goes with you to see the Attorney-General? A. That was at my request.

Q. How did that happen? A. I went and saw her to speak to Mr. Jayetilleke.

Q. You were using her for a special purpose? A. Yes that is all). 10

Q. You went as a penitent son and appealed to her? No answer.

Q. After September you say you continued to visit your mother?
A. No.

Q. But you used to call there on your way to the Courts? A. In this case my brother used to come and pick me up and go to his place to collect his bag and then come to the Courts.

Q. So you did not speak to your mother after September till you went there in December? A. Yes.

Q. You did not speak to Reggie at all till you saw him in December?
A. Yes. 20

Q. Because in your anxiety to secure your job that you asked your mother to intervene? A. Yes.

Q. There was hardly any prospect for you at the Bar and you were employed by the Attorney-General on various missions of his? A. Yes.

Q. And after you entered the Bar your income was little or nothing?
A. Yes.

Q. That is from August to the end of November you were earning nothing you were getting no allowance from your people or your wife's people and you had only a free house to live in and your creditors from whom you had borrowed largely, Rs. 10,000 were calling for payment?
A. No they were not calling for payment. 30

Q. You had no prospect of paying them by earning? A. Not immediately.

Q. And from a few proctors you had letters of demand? A. I have admitted that.

Q. And in other words your financial position was almost desperate?
A. Bad.

Q. I put it to you, you had issued a number of post-dated cheques at this time which had to be met at the due date? A. Which I was renewing. They were prepared to accept renewals. 40

Q. In this state of affairs you approached your mother or brother and asked for assistance? A. Most emphatically not.

Q. How did you expect to pay those creditors of yours? A. I was hoping that sometime I would be able to pay them they were not pressing me for payment.

Q. You were hoping to win the first prize in the Galle Gymkhana? A. I have already said in a letter that was wishful thinking.

Q. You had no prospect of paying that money on your own? A. Not immediately.

Q. Not even in the future? A. I was hoping.

(To Court :

10 Q. You were like Mr. Micawber hoping that something would turn up? A. Yes.)

Q. Did you get your wife to apply to your father-in-law for assistance? A. No in December she suggested going to him.

Q. Or earlier? A. No.

Q. And ask him for how much? A. She suggested she should get Rs. 400 from him.

Q. That is for Christmas? A. Yes.

Q. Can you fix the date? A. It was early in December.

Q. Was it before the Police dance? A. Yes.

20 Q. What was the suggestion? A. That Christmas was approaching and that she should get some money from her father.

Q. And she actually applied with your consent? A. She told me she was going to apply.

Q. Was it with your consent and approval? A. I was aware she was going to apply.

Q. And she got the money? A. Yes.

I do not know whether she got a cheque. She got Rs. 400.

Q. And that was considered by you to be a loan? A. Yes, there was no question of my consideration her father said it was a loan. It was 80 not a gift.

Q. And that was one of the first payment you made after you left the house? A. Yes.

Q. In fact obtained the money from your brother and sent her father a cheque for Rs. 400? A. Yes.

Q. Apart from that earlier than December did your wife to your knowledge apply for assistance from her father? A. No.

Q. Your position then to sum up was that you were getting no assistance from your people, no assistance from the wife's people, how did you expect to pay this huge sum of Rs. 10,000 to your creditors? A. 40 I was hoping that something would turn up.

Q. You were simply living on hopes? A. Yes.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
—continued.

Q. I suggest to you that you in this predicament went to your mother and brother to ask for financial assistance? A. Certainly not.

(Evidence given at the alimony inquiry read to witness) : It is correct what I have stated there that on the 19th of December, 1941, two cheques were sent to my credit for Rs. 400 and Rs. 200 and that they were both given to me by my brother.

Q. That is the day you left the house? A. Before I left my brother gave them. I wanted that money to pay my creditors.

Q. Before you left you were anxious to pay your wife's father?
A. Yes. 10

Q. You deny that you went to your mother and brother for financial assistance? I deny.

Q. Was there anything wrong in that? A. In itself it would not be improper but taken in conjunction with what happened, my leaving the house it would have been construed to have been improper.

Q. Had your leaving the house anything to do with your brother or your people? A. None at all.

Q. I put it to you that when you went to your people for assistance they made the giving of the assistance conditional, namely your leaving the plaintiff? A. Certainly not. 20

Q. Your mother had not given you any money whatsoever for a considerable time? A. No.

Q. At the alimony inquiry you said that in the previous year that is prior to 1942 your mother did not give you anything? A. Yes.

Q. Nor did your brother give you anything? A. I did not say so.

Q. But did he give you anything in 1941? A. Not till December.

Q. And at the time of the alimony inquiry he had given you about Rs. 5,000? A. Yes.

Q. And after you left the house you paid your debts to the tune of 30 Rs. 8,000? A. Yes.

(To Court :

Q. So far as I understand it the situation seems to be that that payment was in consideration of your giving up this woman? A. That is utterly false.)

Q. Although you went to Laurentem in September up to the time you left your wife did not go there at all? A. No.

(Shown statement 1D5): "You think you have done right in leaving me taking my child.....and to which you have asked under no circumstances to go or to send the child". Is that passage correct? A. 40 According to my earlier letters.

Q. You said that by the 14th December you had made up your mind definitely to leave the plaintiff? A. Yes.

Q. Between the 7th and the 14th? A. Yes.

Q. When did you see your brother? A. On the 16th.

Q. Once you made up your mind to leave what was the delay in seeing your mother or brother? A. I had to meet my brother Christie first and arrange the matter.

Q. You did not want to go there direct. You wanted to do it through your younger brother? A. Yes.

Q. Why was your elder brother so inaccessible? A. I preferred to do it that way.

10 Q. Why? A. Because I felt that my younger brother should talk to him first. And arrange the meeting.

Q. All that you asked your brother was to arrange a contact between you and your brother? A. Yes.

Q. The purpose was not mentioned? A. No. I only told him I wanted him to see my brother and arrange the meeting. That was because the relations were strained between my elder brother and myself.

Q. Did you take Christie also to the conference? A. I think he was there and I discussed it with him.

20 or 19th? Q. Was it on that day arranged that you were to leave on the 18th or 19th? A. Nothing was arranged. I had taken the decision to leave.

Q. The date you had not decided on? A. No.

Q. Was it arranged on that day that you were to leave on the 19th? A. I told him I would take the first opportunity to leave.

Q. You did not go to your mother's place. Not till the 19th night? A. No.

Q. Besides Christie did you meet any member of your mother's household? A. Not till the 19th.

(To Court :

30 Q. Your strategy was to find an opportunity when the lady would be away to get away with the child without disturbance? A. Yes.

Q. That happened on the Medical Dance? A. Yes).

Q. On the morning of the 18th did you inquire from your wife about your jewellery? A. No. I did not inquire on the 18th.

Q. Did Christie inquire from you about your father's jewellery? A. No.

Q. You had some jewellery of your father in your possession? A. In plaintiff's possession.

Q. You took them away to be pawned on the 19th? A. Yes.

40 Q. You told her you wanted to pawn them on the 19th? A. Yes.

Q. You gave her also the reason why you wanted to pawn them? A. The reason I gave was that I wanted to repay her father.

No. 80
Defendant's
Evidence
Stanley
Alles
Cross-
examination
—continued.

Q. Not that Kotalawala had sued you? A. No.

Q. Was the money got from Reggie that morning? A. Yes.

Q. In other words then another act of strategy on your part to get hold of the jewellery? A. I would not say it was another act it was an act of strategy.

Q. It was part of your scheme to go away? A. Yes.

Q. On the 19th was the Medical dance? A. Yes.

Q. That day did you come to the Courts? A. Yes.

Q. And was it arranged that the plaintiff and all of you should go to the dance? A. 2nd defendant invited me to come to the dance 10 that day I did not go.

Q. In fact you encouraged your wife to go? A. No. On the morning of the 19th I got a message at the Courts by telephone.

Q. She asked you to accompany her to the dance because her father was interested that her sister should go? A. Yes.

Q. You had previously refused? A. Yes.

Q. Then she said she would arrange with her sister and brother? A. Yes she told me that in the evening when I got home.

Q. In the evening you went home and again you were pressed to accompany her? A. No, at that stage she told me her brother was 20 taking her.

Q. There was the brother, her sister herself and the 2nd defendant? A. At that time she did not tell me that 2nd defendant was going with her.

(To Court :

I was not there when he asked my wife he came to the office and asked me.)

Q. How long before the 19th was the invitation? A. Late in November.

Q. When the invitation was given to you did it not strike you to ask 2nd defendant I am not going you had better ask Merle? A. I 30 did not.

Q. On that day did you tell the 2nd defendant I cannot go with you or accept the invitation please do not take Merle? A. When he asked me I refused.

Q. After that did you tell him do not take plaintiff to the dance or invite her? A. No I did not.

Q. Why? A. No need for him to do it.

Q. It did not matter to you whether she went or not? A. No. At that stage I had not made up my mind to leave the house.

Q. So it did matter to you whether she went or not? A. Not a 40 question of not mattering.

Q. What is it? A. I did not expect her to go to the dance if I was not going.

Q. You have already said previously in spite of your wishes that she should not go with the 2nd defendant she did go? A. That is subsequent to Dr. Wickremasooriya's visit.

Q. Early in November? A. About the middle of November.

Q. So at that time you would have had no objection to your wife going out with the 2nd defendant to the dance? A. No.

(To Court :

10 Q. 2nd defendant had invited you to the Medical dance before Wickremasooriya spoke to you about the five months' pregnancy? A. That is so.)

Q. The invitation to the dance were available by the end of November? A. I do not know. It was not a question of invitation the tickets had to be paid for.

Q. Did you know that tickets had been obtained by 2nd defendant or anyone else? A. No.

Q. On the 19th the 2nd defendant came to your house? A. Yes.

Q. What time? A. 7 or 7-30.

20 Q. So did your brother-in-law? A. Later.

Q. You had dinner together? A. Yes.

Q. Was the 2nd defendant dressed for the dance? A. Yes.

Q. You all dined together? A. Yes.

Q. And the four of them went away? A. Meanwhile the Ludowykes also came.

Q. In two cars these six people left for the dance? A. Yes.

Q. You then after that went away and there appeared three lorries at Merlton? A. One lorry. That is the lorry which I had told my mother's driver to have ready for me.

30 Q. Had you all this time by the 19th come to the position of being able to control your mother's employees? A. My mother's employees I can always get them if I want.

Q. They take orders from anyone of her sons? A. Yes. The driver in particular he had been with us long. I had got him up and told him to have a hired lorry ready

Q. The driver was very serviceable that night? A. Yes.

(To Court :

Q. Did not the servants come round then? Did they know until the lorry came that you were going? A. Nobody knew.

40 Q. Was there any commotion in the house that day when the articles were being put into it? A. The servants also helped.

Q. Were they astounded? A. They were.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
—continued.

Q. Did not they speak to you? A. None of them spoke.

Q. Sophia and Jane were they there? A. Sophia was there.

Q. You ordered the child to be dressed? A. I brought the child in its sleeping suit.

Q. When you ordered the child to be taken away did not the servants say what is the meaning of this? A. No, because they were too astounded. I speak Sinhalese they did not say what is the meaning of this.

Q. And did you not then explain I have come to the end of my tether and so on? A. They did say something to me. I do not know whether I can say it. 10

Q. One of those witnesses are here? A. Yes. Alice said I am not surprised one bit at your doing this.

Q. Did you not ask her what she meant by that? A. No.

Q. On this date you had no proof of misconduct? A. No.)

Q. And she assisted in the get away? A. None of the women did.

(To Court :

Q. Did not Alice say Sir while you were at Jaffna I have seen some extraordinary things happening in the house? A. She did not tell me at all. I did not stop to talk to her because I wanted to get away. 20

That night my mother did not come to the house. She did not come in a car to Merlton. I deny that the child was put into that car.

Q. Who was the baby's ayah? A. Sophia. She did not come with me I left the ayah behind.

Q. Why? A. Because I did not want to take any of the staff. I only took my personal boy.

Q. Your personal boy was no member of the staff? A. He was my personal boy. His name is Velu. He is not a witness. He was with me in Jaffna, he was not in Colombo. 30

Q. Why did you not take Sophia the ayah of the child? A. I did not want any servant who had been there.

Q. Why? A. Because I did not want.

Q. Is it because you did not want the Laurentem atmosphere contaminated? A. Nothing about the contamination I did not want any of those servants. I speak Sinhalese. I do not claim to be able to speak it fluently.

Q. After Alice told you I am not surprised did you not think it best that if you take Sophia away she may give some information? A. I did not want any servants. 40

Q. You were not concerned about obtaining information from the servants? A. Not at that time.

(To Court :

I have been a lawyer since 1931 November. I know what malicious desertion means.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
—continued.

Q. What do you think of it were you leaving without the intention of returning. A final and irrevocable repudiation of the married stage?

A. Yes.

Q. You were definitely leaving your wife on this date? A. Yes.

Q. It was a final and definite break with your wife? A. Yes.

Q. What was your justification for your doing that on the material
10 you had in your possession of the 19th? A. The fact that she would not listen to me and there were rows going on and she persisted in going out with the 2nd defendant despite my telling the plaintiff not to and I felt there was justification for my leaving.

Q. You say she was guilty of constructive malicious desertion? A. Yes, and I know more now.)

Q. The statement that Alice made that she was not surprised was rather significant? A. Not only Alice the other servants too said they are not witnesses.

Q. On the 19th December who were the servants in the house? A.
20 There was the boy Philip and Velu. The women were Alice, Sophia and Jane. Alice was the cook woman, Sophia was the ayah and Jane was plaintiff's ayah.

Q. When they saw you removing the things they in one accord said they were not surprised? A. Yes.

Q. You had made up your mind to leave between the 7th and the 14th? A. Yes.

Q. And remained in the house another five days? A. Yes.

Q. At that time you say the plaintiff your wife was going about with 2nd defendant frequently? A. Yes.

30 Q. And you did not interfere? A. I did attempt to stop her and I realised it was useless.

Q. You were in the house, did you at that time think it necessary to question or make discreet inquiries from the servants in regard to your wife? A. It is not my practice to ask servants anything about people in the house.

Q. You were too proud? It was not a question of pride I wanted to keep servants in their places.

Q. Having kept the servants in their respective places up to the 19th on the 21st you did in fact inquire from the servants? A. They
40 visited me.

Q. Why did they visit you? A. Both of them said that they were anxious to see the child. Sophia and Alice came.

Q. Did you ask them questions? A. No.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
—continued.

Q. Did they come and see the baby then? A. They told me, Sir we are not surprised and so on.

Q. Why did you not keep them in their places and say you are not in the habit of talking to people like that? A. Because I felt they had valuable information to give me.

Q. Then even from servants you get valuable information? A. If it is volunteered.

Q. You would not go out of your way to get it? A. I would certainly ask if I feel it was going to be useful.

Q. Why did you not when they in one chorus said so on the 19th? 10
A. I was solely concerned about getting away that day.

Q. From the 19th till the 21st when they came to your place did you make any effort to get contact with the servants? A. None whatever.

(To Court :

Q. When Dr. Wickremasooriya told you that your wife was five months pregnant and you knew if that was correct you could not be the father of the child and then after those two incidents of the 5th and 7th December, you were then suspicious that your wife had been unfaithful?
A. Yes. 20

Q. Did it not strike you as an ordinary man to find out from the servants whether there was any cause for suspicion? A. No.

Q. Why? A. Because I never thought there was any misconduct in my own house for one thing and the other thing was beyond suspicion I had nothing else and I did not want to be unfair to the plaintiff by asking the servants about her movements.)

Q. Why did you not want to be fair to yourself? A. Because I did not want to ask them. On the 21st when the servants came I still had suspicions only. Out of those two servants who came that day there is only Alice on the list of witnesses. 30

Q. Why are you not calling Sophia? A. I have not been able to find her.

Q. After Sophia made the statement to you on the 21st did you not tell her let me know if you are leaving Merlton? A. No. I asked for her village address.

Q. And it was given to you? A. Yes. She gave me the village as Kandalankare. I made efforts to trace her and failed.

Q. Were you satisfied with that address? A. She gave me S. A. Sophia Nona, Kandalankare, and she told me that that would suffice.

Q. Where did you get her from? A. She was in employment 40 when I came from Jaffna.

Philip is the boy. He serves at dinner and so on. He has gone away to his village. He gave an address in Colombo which I tried to trace but I cannot because I am told he has gone to his village. Jane is on plaintiff's list she accompanied the plaintiff to Kandana when she left.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
—continued.

Q. She is not on your list? A. No because I was aware that she had gone as plaintiff's ayah to Kandana.

Q. Did she tell you anything? A. Yes.

Q. After Alice made the statement to you were you then fully convinced that there was something wrong? A. Yes.

10 Q. What steps did you take to find the evidence? A. I failed to get Sophia and Philip.

Q. Who are the others? A. I tried to trace Pabilis. Pabilis was engaged by the plaintiff and he was there during the relevant period. She had engaged him while I was in Jaffna.

Q. Did you see Pabilis at all in that house? A. Yes.

Q. On what occasion? A. When I came down in August. On the 9th August I saw him in the house. I left on the night of the 10th.

Q. And your knowledge of Pabilis extends only to those two days? A. Yes.

20 I came back on the 21st August and he was in the house then. He left I believe in October.

Q. Did you not ask him for his village? A. No.

Q. Once he left your place you entirely lost sight of him? A. Yes.

Q. How did you get at his address? A. I knew he was living in the Kalutara District and that is where I traced him.

Q. How did you know that he was in that District? A. I was aware of that.

Q. It is a vast District how did you find him? A. He told me he was living in Mahagama area.

30 Q. He told you before he left? A. I heard him mentioning it to Markus Silva. Markus Silva came to my house and he mentioned it to him.

Q. Markus Silva assisted you to get at him? A. No.

Q. Markus Silva is a well known planter in Mahagama and an influential gentleman? A. Yes.

Q. He is one of your witnesses and a particular friend of yours? A. Yes.

Q. A very intimate friend of yours? A. Yes.

40 Q. So intimate that he brought his car to the railway station when you returned from Jaffna on the 9th April? A. Yes.

Q. Pabilis and Markus both hail from the same district? A. From that area but I do not know whether the same district.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
—continued.

Q. You also had another servant on your list? A. Yes, Joslin.

Q. When did she come on the scene? A. She had been in employment while I was in Jaffna.

(To Court :

There are three servants to prove what was going on in my absence, Alice, Pabilis and Josline and the garden cooly Velayuthen is also on my list.)

Pabilis is from Mahagama District, I did not go to find him. I sent a man down. I knew his ge name.

Q. What is it? A. I cannot say off hand. 10

Q. It is not in the list? A. I did not put it down in the list.

Q. That was done of design? A. Yes.

Q. Who was sent down to fetch him from Mahagama? A. My mother's driver.

Q. At this point your people were helping you? A. Yes.

Q. And all the information you were able to give was his ge name?
A. Yes.

Q. And from the Mahagama District? A. Yes.

Q. The man was ferretted out by your mother's driver? A. Yes.
Josline was originally the cook woman employed by us some time before. 20
That is when I was at Reid Avenue.

(To Court :

Q. That is about the time that Hortense was born? A. In 1937-1938. She had been with us from 1937 to 1938. October, 1937, to November, 1938. Alice came in 1940 to December, 1941. Velayuthen was employed while I was away. I believe in March and was there till I left.)

Q. Right up from Reid Avenue Josline had been with you till you broke up house? A. No.

(To Court :

Jane was employed while I was away and was there and went with 30
plaintiff to Kandana.)

Josline was employed from October, 1937, to December, 1938. After that she was re-employed by the plaintiff in March last year while I was away. But not as cook woman but as baby's ayah. At the time I returned from Jaffna she had already left the service. I understand she was there till July and went up with plaintiff to Bandarawela.

Q. As a matter of fact you had never seen Josline in the house? A. Not during the second period. I had seen her in Bandarawela when I went up on the 11th.

Q. That was only for a few months? A. Yes. 40

Q. After that you came back to Colombo in August for the races?
A. Yes.

Q. Was Josline there? A. No.

Q. Did you know where she hailed from? A. I did from Kirillapone.

Q. She told you that? A. I was aware of that earlier. I traced her.

Q. Through whom? A. The driver.

Q. When did you succeed in tracing Josline? A. I cannot tell you offhand.

Q. Was it in January, February or March? A. It was about the middle about May, but I cannot bind myself to that. It was 1942.

Q. After April? A. Even that I cannot say.

Q. Were all these servants traced about the same time? A. Even that I cannot say.

Q. When did you first set your mother's driver in search for these servants? A. I told him that I should like to try and trace some of these servants.

Q. When was that? A. I cannot say.

Q. When did he succeed? A. I cannot say off hand.

Q. You interested your driver in this matter about January or February? A. Yes.

Q. And can you tell us how you got at Pabilis for instance? A. I cannot say.

Q. When? A. I cannot say.

Q. The driver might be able to give you the dates? A. I cannot say.

Q. You cannot give the date that Josline was brought to you? A. No, I cannot.

Velauthen was there on the 19th December when I left the house.

Q. After talking to Alice and Sophia did you talk to him? A. No.

Q. Your wife wrote 1D5 to you and left Colombo are you aware about the 24th? A. I do not know.

Q. She returned to Colombo and broke up her house at Merlton? A. I can only speak from hear say.

Q. After the 21st did you see Alice at all in December? A. Yes I did. The plaintiff sent the whole staff to me on the 31st December.

Q. Meaning thereby? A. The three women and the boy. Jane, Alice, Sophia and Philip and Velauthen.

Q. What for? A. To get their salaries from me.

(To Court :

Q. At that date these women had come and made statements to you? A. Two of them had come, Sophia and Alice.)

No. 80
 Defendant's
 Evidence
 Stanley
 Alles
 Cross-
 examination
 —continued.

I did not pay them. I told them that the lady has got all the money for this month and that they should go to her.

Q. But did you not think that a good opportunity to take statements down from them? A. No I did not want to do it at that stage. Because I did not know what reactions there would be by the servants as they were going back to the plaintiff.

Q. What reactions, why did you not take an affidavit or signed statements? A. I did not.

Q. Is that not rather strange? A. I did not want the servants to know what I knew at that time because I did not know how they would deal with the matter. 10

Q. What is the matter, if you had the statement? A. Statements would be of no use if they go back on them.

I did not know which of the servants would inform the plaintiff of what I had done and I am glad I did not because subsequently Jane did go and take employment with the plaintiff and plaintiff would have known what I had done.

Q. Why should the statement become valueless owing to the fact that she had taken employment under your wife? A. There was every likelihood she would not have stood by the statement. 20

(To Court :

Q. On the 21st December some of these servants had come and told you certain things which showed you that your friend had been treacherous to you and that you were probably not the father of your child your wife was going to have? A. Yes.

Q. You had clear evidence? A. Yes.

Q. Then when the servants came on the 31st December why did you not question them? A. I did not want, I had questioned two of them and I had my doubts about the other three.)

Q. You were sure of the two Sophia and Alice? A. I was aware of what they had told me. 30

Q. They told you that your wife was going to break up house? A. No they said that she had sent them to get their salaries.

Q. Did they not tell you that she was going to break up house and they were going to leave the service? A. No.

(To Court :

Q. At this date the 31st had you consulted lawyers about these proceedings against your wife? A. No.

Q. When did you first take independent legal advice? A. In early January.) 40

Q. You had not consulted lawyers when you left on the 19th? A. I had spoken to Mr. Abeyewardena only on the afternoon of the 19th.

Q. And the letter P2 was that drafted with Abeyewardene's assistance? A. No it is my own composition.

Q. Before the servants came on the 31st you sent this note across to your wife—P31 dated 27-12? A. Yes. I wanted the clothes brought by the dhoby.

Q. And in reply to that your wife wrote a chit on the same day and sent with your clothes the baby's clothes? A. Yes.

Q. Have you got that? A. It is with my lawyers.

(Mr. Amerasekere calls for the document—witness looks through his 10 papers and says he cannot find it.)

(Mr. Amerasekere produces a copy P32.)

Q. She also sent you another letter with Hortense's frocks? A. With a new frock for Hortense.

Q. That was for Christmas? A. Yes I think.

Q. Those are the only chits you received from her after she left the house? A. Yes.

Q. Velauthan was in your employ on the 19th December? A. Yes.

Q. And had been so for how long prior to that? A. From March 20 I believe, I was in Jaffna.

Q. And he came to you on the 27th? A. Yes with the chit.

Q. He came unaccompanied by a police officer and he brought a parcel? A. Yes.

Q. Did you question him? A. No because I knew he was going back to the plaintiff.

Q. Stooping too low? A. No I did not question him.

Q. You wanted to get the servants outside the influence of the plaintiff before you broached this matter to them? A. Yes.

Q. Did you ask Velauthan where he was going? A. No.

30 Q. How did you get at him after he left Merlton? A. He was met casually by the driver one day walking along Horton Place. Accidentally and that is why he is on the additional list.

Q. I suppose the driver brought him to you? A. Yes. I asked him what he knew about it and noted it down. I did not get him to sign it.

(To Court :

Velauthan was paid Rs. 17.50 I believe without food. Josline I do not know how much she was paid. The plaintiff did that. Nor do I know how much Alice and Jane were paid or Philip. The servants wages 40 came to about Rs. 55 or Rs. 60 a month. We gave their food in the house.)

Q. These salaries came out of the Rs. 175 allowance you allowed your wife? A. No I do not think so. Because I used to pay something extra on account of the staff.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
—continued.

Q. How much did you give your wife a month? A. Rs. 175 for running the house, that is for daily expenses and the milk bill, that is all.

Q. Who paid the servants' wages? A. I.

The servants' wages and household expenses came to about Rs. 200 or a little more.)

Q. Besides these servants there are several servants who come to the house from outside, the milk man for instance? A. Yes.

Q. Did you meet him and discuss this matter? A. During this period milk was being supplied by the Baby Dairy, that is in 1941. I know the milkman Dondias. I cannot say when he ceased supplying milk. I have no recollection.

Q. You still owe him Rs. 106? A. No about Rs. 80.

Q. And he came to you and asked you for this money? A. No I sent for him. That was early this year.

Q. Who went to fetch him? A. I think one of his assistants whom I met on the road. Dondias was running the dairy. I do not know the name of the assistant he is a man whom I had seen coming into the house. I casually met him. I sent for him because I had heard he was aware of certain things. I did not pay him the Rs. 80. I questioned him.

20

Q. Who was there when you questioned him? A. My brother was there Reggie.

Q. Anyone else? A. I do not think there was anyone else.

Q. You got no useful information from him? A. I did, but it was a matter of doubt whether I should put him on the list or not.

Q. Did you offer to make it worth his while if he gave evidence in your favour? A. Certainly not.

Q. I have got an affidavit from him. A. You may have an affidavit from him.

Q. Did you ask him to say that he saw the 2nd defendant at Merlton in his pyjama in the morning? A. I did not.

Q. Did you offer to pay him Rs. 15 a day for attending Court if he gave that evidence? A. If he says that it is utterly false.

I may also say that at the time I was aware that plaintiff's father and driver had been to see Dondias.

Q. Who told you that, was it some member of your secret service Mr. Kandavanam or Mr. McIntyre? A. I do not know them.

Q. You know Kandavanam? A. I have heard of him.

Q. What is the evidence of your wife's misconduct that you obtained? A. I have evidence of misconduct in Bandarawela.

40

Q. When did you obtain that evidence of misconduct at Bandarawela? A. I cannot say.

Q. You said in answer to the interrogatories that your wife had committed adultery at Bandarawela between the 10th and 14th April at the boarding house run by Mr. Outschoorn by day? A. Yes.

Q. When did you receive that information? A. I cannot say. Must have been sometime prior to my swearing the affidavit.

Q. Can you say when you first got the information? A. I cannot. (To Court :

Q. Did you keep a diary of your steps like a Police Information Book? A. No.)

10 Q. Did you go to Bandarawela at all? A. Yes, recently.

Q. That is the only occasion in which you or anybody in your interest went up there to find out the evidence? A. I could only speak for myself.

Q. Nobody in your interest? A. My brother went up earlier. I went on the 13th November. My brother went some time prior to that I cannot say the month. I cannot say how long before the 13th November.

Q. When he returned did he have any information about the misconduct of your wife?

(Mr. Wickremanayake objects. Objection upheld).

20 Q. With whom did you go? A. Mr. D. F. de Silva. I interviewed the Outschoorns.

Q. Are they your witnesses? A. Yes.

Q. You interviewed the Solomons? A. Yes.

Q. You say the Solomons were known to your mother for a long time? A. Yes.

Q. She herself had seen the Solomons and Outschoorns? A. I do not know whether she had seen the Outschoorns, she saw the Solomons. She stayed there.

30 Q. You say that the "said parties committed adultery on the night of the 18th April, 1941, at a place I cannot specify"? A. Yes.

(Mr. Wickremanayake says it should be "which I cannot now specify"

Q. You had information undoubtedly at the time that she had committed adultery on the 18th at Bandarawela? A. Yes.

Q. You had received that information from certain friends? A. Yes.

Q. That adultery was committed on the 18th? A. At that time my knowledge was that she had spent the night of the 18th at Solomons' boarding house and she had gone out along with the 2nd defendant.

40 Q. Therefore you thought it was proper to say that she had committed adultery with the second defendant that night? A. Yes.

Q. As to the place she went that night you had no information at the time you swore the affidavit? A. No. I got that information subsequently to my swearing the affidavit. That is as much as I can say.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
—continued.

Q. How long after the affidavit if it is dated October? A. Then it must have been in November.

Mr. Namasivayam is on my list of witnesses.

(To Court :

Q. Are you friendly now? A. If I met him I talk to him.)

Q. Have you tried to obtain a statement from him in this case?

A. No.

Q. Can you tell the Court what you expect him to say? A. I was going to ask him about the trip on the 18th.

Q. When did you speak to Namasivayam about the Bandarawela 10 trip on the 18th? A. I forget I cannot say when.

Q. Can we assume that you must have spoken to him at the first opportunity? A. No, because I did not know then that she had spent the night out.

Q. After you left the house on the 19th? A. I was not aware there was any misconduct on the night of the 18th.

Q. You followed the trail and with that object did you not question Namasivayam? A. I was not aware of any misconduct on that trip.

Q. So you got information of the misconduct before you questioned Namasivayam? A. It was only when I was informed that she spent 20 the night of the 19th April out. After going to Bandarawela I was aware that there had been misconduct. I went in November. I got the information at Bandarawela that she had spent the night out.

Q. You swore this affidavit on the 23rd October? A. Yes.

Q. How did you then say that she had committed adultery on the 18th? A. Because my brother and mother had gone and she had stayed at the Solomons and my mother had also been told, that is all.

(To Court :

Q. At the date you went up to Bandarawela had you evidence in your possession that your wife had been unfaithful to you on the 18th 30 April? A. I was aware that she had spent the night out.)

XXD by 2nd Defendant's Counsel.

Q. Will you say that ordinarily you are a strong-minded person?

A. I could not undertake to answer that.

Q. Do you generally in your own affairs content to take decisions of your own? A. I suppose so.

Q. Or are you apt to seek other people's advice? A. I might have their advice if I feel I want it.

Q. It would not be correct to say that you are easily led? No.

Q. To that extent then you are a strong-minded man? A. Yes. 40

Q. Now I think you have already said you contracted this marriage with the plaintiff against the wishes of your parents? A. Yes.

Q. And at the date you contracted that marriage you were really not in a position to support a wife? A. Yes.

Q. You had no income of your own? A. No.

Q. You were then I think practising at the Bar? A. Yes.

Q. And it is also correct to say that your income at the Bar was nil?
A. Yes very little.

Q. When you contracted the marriage you were expecting to be supported by your father-in-law? A. Yes.

Q. In point of fact he supported you? A. I lived with him.

10 Q. And he paid your bills? A. I had no bills.

Q. When you say you lived with your father-in-law you had a house to live in and you were fed but your other requirements who met them?
A. I had very few bills.

Q. Apart from bills any cash payments? A. I paid with whatever moneys I had.

Q. What moneys did you have when you contracted this marriage?
A. I had a little money. I cannot say how much. I had a banking account. It was at the Mercantile Bank. It was closed last year or early this year.

20 Q. Why? A. They stopped, *i.e.* because they were dissatisfied with the account.

Q. When did you first begin to act as Crown Counsel? A. December, 1935.

Q. And I take it the early period or periods of acting were short?
A. Yes. Sometimes 10 days a fortnight and so on. The longest period I acted was in 1937 and I was then more in the department than out. My salary as acting Crown Counsel was Rs. 545.

Q. It would be correct to say that that was the first regular source of income you had after your marriage? A. Yes.

30 Q. And you were very anxious that that employment should be continued? A. Yes.

Q. The prospect of some time having to go back to the Bar and be unemployed so to speak for a certain period of time was a particular strain? A. Hardly a strain but the fear I had.

Q. That was always present in your mind? A. I was always hoping to be continued.

In the alimony proceedings I admit I stated that my total indebtedness about December, 1941, was Rs. 7,000.

Q. Now you say Rs. 10,000? A. Yes.

40 Q. Can you say when the Rs. 7,000 was reached? A. I think what I said in the alimony proceedings was that that debts to that extent had been paid.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
—continued.

Q. When did your debts amount to Rs. 10,000? A. They were always round about that.

Q. When did they reach Rs. 10,000? A. At the end of last year and out of that Rs. 7,000 had been paid when I gave evidence in that inquiry.

Q. In 1937 when you were more in the department than out what was your indebtedness? A. I cannot say. I think I only owed J. B. Alles at that time.

(To Court :

Q. When you were appointed Crown Counsel the Attorney-General¹⁰ knew you were in debt? A. I do not know that. I was not asked that before I was appointed.)

Q. Is it correct that in 1937 when you first began the continuous employment in the A. G. Department you were not in debt? A. Yes. Except that I owed J. B. Alles.

Q. Then your debts began to increase after 1937? A. Yes.

Q. Till when did you continue to live on your father-in-law? A. September, 1936, but he earlier moved to the estate and I was living alone at Rockmore with plaintiff.

Q. Did you get an allowance then? A. By that time I was 20 getting the rent of Merlton. Rs. 175.

Q. After your father-in-law left you maintained the lady in that degree of comfort to which she was accustomed when she lived with her father? A. Yes.

Q. On that Rs. 175 a month? A. Yes. But in 1937 I had a steady income of Rs. 545 a month. In 1938 I was out of the department. In 1939 also I was out and I went back in 1940 February when I went to Jaffna.

(To Court :

Q. When you started acting in February, 1941, were you extra Crown⁸⁰ Counsel or one of the permanent staff? A. Acting, because of the Jaffna circuit they had to take an extra man.

Q. What were your duties? A. I had to share the Northern, Southern and Eastern circuit work. That is instruction work and reporting.

Q. What else? A. And prosecuting.

Q. While you were at Jaffna every post brought you a bulky packet of papers from the A. G's. Office? A. Yes.

Q. Instruction cases and files for reporting? A. Yes.

Q. And you were in Court all day? A. Yes.

Q. When did you do your work then? A. By night.

Q. How many hours? A. It depended on the urgency of the work it might be two or three or four hours.

When I returned to Colombo I ceased to be in the department. During the Easter vacation when I went to Ratnapura I had finished all my earlier work and what little I had did not demand immediate attention but I brought that to Colombo for attention. I did not take any with me to Ratnapura.)

Q. Do I understand you to say that during 1938, 1939 and 1940 you had no employment in the A. G's. department? A. Yes I think that is correct.

Q. And what was the extent of your income at the Bar during that period? A. I have stated that in the alimony inquiry I do not have the figures now.

Q. I think your evidence there was that for three years preceding the action your salary plus income averaged Rs. 187? No answer.

Q. When did your debts amount to any considerable figure in 1938, 1939, 1940? A. During the period beginning 1938.

Q. What part of 1938? A. I cannot say it began in 1938.

Q. The middle of 1938 about that time what was the figure? A. I cannot say. I cannot say whether it was Rs. 5,000 or Rs. 6,000. I cannot say even approximately. In 1937 my only creditor was J. B. Alles. I cannot say who my other creditors were from memory in 1938.

Q. You cannot mention any one, shop bills? A. I believe I took a sum of money in 1938.

Q. Money lender? A. No. The largest sum I borrowed in 1938 was Rs. 750. That was from Mr. Mathew.

Q. Was there for any particular requirement? A. In connection with plaintiff's confinement.

Q. In respect of these indebtedness there was no security you could give? A. No.

Q. They were promissory notes or shop bills? A. Yes.

Q. Did you have to pay interest on the notes? A. Yes.

Q. How frequently did you pay? A. Once in three months or six months as arranged.

Q. Did you pay every month on particular loans? A. Sometimes.

Q. I do not mean whether on every loan you had to pay every month interest on certain loans fell due every month? A. I would not say every month.

Q. What was the average interest that fell due every month? A. I cannot say from memory.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
—continued.

Q. Are you sure you paid your wife's first confinement bill? A. Yes.

Q. I am instructed that the bills were paid by your father-in-law?
A. I think I still hold the receipts from the nursing home. The money was not provided by my father-in-law.

Q. Can you say what was the monthly interest that fell due, what was the rate? A. That depended.

Q. Ranged between what figures? A. 12 or 15 per cent.

Q. If you take an average of 12 per cent. on an average indebtedness of Rs. 10,000 the monthly interest would be Rs. 100? A. Yes. 10

Q. So it would be correct to say that apart from your own expenses you had to find that amount of interest every month? A. Yes.

Q. Did you pay all creditors regularly? A. So far as I could.

Q. In point of fact you had to see them regularly to keep them in good cheer? A. I do not think so.

Q. Did you make regular calls on them? A. No.

Q. Had you periodically to go and see them? A. No.

Q. When cheques fell due they were returned and so on? A. No cheques at that stage.

Q. When did you first begin to borrow on cheques? A. Later 20 1940 1941.

Q. In 1941 you were in employment again? A. Yes.

Q. I put it to you that in 1938 your indebtedness could not have been considerable if it were due to your ordinary living expenses because you had a regular income in 1937? A. I cannot say. During the whole of 1937 I had a regular income of Rs. 545.

Q. Rs. 175 sufficed to keep you and your wife in comfort? A. No. I had to pay the rent.

Q. What was the rent you paid? A. The rent of Shady Grove.

(To Court :

30

In 1937 1938 I was saving a little money.)

Q. In 1937 receipts were in excess of your requirements? A. Yes.

Q. So in 1938 you were flushed so to speak? A. Yes.

Q. When did that happy condition alter? A. In 1938 I stopped and moved into Merlton as there was no tenant.

Q. Then you found yourself in a house with no income? A. Yes.

Q. Then you began to borrow? A. Yes.

Q. Did your father-in-law help you during that period? A. No, he was living with us. He came to live there in 1938 November when I moved in there. 40

Q. So until 1938 your father-in-law lived with you there until he went to Kandana? A. Yes and my sister-in-law stayed there from 1939.

Q. My instructions are that your father-in-law paid the bills when he was staying there. A. That is untrue I paid them.

Q. He provided the money to pay them? A. No. He only paid his board Rs. 50 a month and he paid Merita's board Rs. 50 a month.

Q. Did you make any profit on the boarding? A. I do not know, the plaintiff ran the house.

Q. What did you give your wife roughly during that period? A. I always tried to give her the same sum about Rs. 175.

Q. At the end of 1941 your total indebtedness had reached Rs. 10,000
10 A. In 1941. At the end of 1940 it was Rs. 7,000.

Q. In 1941 then you got into further debt? A. Yes.

Q. Although you were in receipt of an income as acting Crown Counsel? A. These debts were subsequent to August.

Q. Did your creditors begin to press you for the principals? A. Mr. Mathew asked for it. In December, 1941, I owed him Rs. 500 and he asked for payment. I was unable to pay at that time. Mr. Kotalawala also wanted his money back. I owed him Rs. 500. I paid part of it in 1941.

Q. Who was your largest creditor in 1941? A. The most I owed
20 was to J. B. Alles Rs. 100. He asked for repayment in 1941. The situation in 1941 was that some of my creditors were pressing. I admit I was unable to pay. But I had arranged with them to pay them later.

Q. Did you receive letters of demand? A. Yes.

Q. Is it correct that by December, 1941, the position had considerably deteriorated? A. Yes.

Q. And your income at the Bar had also dwindled? A. Yes.

Q. And you had not been re-employed in the department? A. Yes.

Q. Is it correct to say that the only terms on which your people
30 would take you back was upon your giving up your wife? A. No. Debts to the extent of Rs. 8,000 were paid by my brother. I have not given him any security. There is no promise of repayment but I will have to repay.

Q. At the moment your chances of repayment are nil? A. Yes.

Q. If you got judgment against 2nd defendant and recovered you might? A. Yes.

Reggie was in England. It was about the time that 2nd defendant was there. They were friends. In 1937 my brother Reggie was where I cannot say. I remember his living in Sea View. I have visited him there.

Q. 2nd defendant as a friend of his used to go to that house? A.
40 I do not know.

Q. Do you deny you met him there? A. I have no recollection of having met him there.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
—continued.

Q. Will you deny that your wife has met him at your brother's house in Sea View? A. I can say that she said she had been introduced to 2nd defendant after I had been operated in 1940.

I know Dr. Irwin Senanayake.

Q. Do you recall a party at his house in the middle of 1939? A. Yes.

Q. You remember you played tennis? A. Yes.

Q. Your wife was there? A. No.

Q. Will you deny that your wife met the 2nd defendant at that party? A. I deny that. 10

Q. If he says that on oath? A. I would dispute that statement.

Q. If your wife says so would you deny it? A. Yes. I am sure that I went to that party and met 2nd defendant there but my wife was not there.

The operation for appendicitis was in 1940. Dr. Samahin anaesthetised me. I do not know whether he paid only one visit for that purpose. He can answer that. Dr. Gabriel operated on me.

Q. You would be in Dr. Gabriel's charge and he would be the person who would see till you got well? A. Yes.

I was in the private General Hospital for two weeks. 20

Q. My instructions are that after the operation 2nd defendant did not go to that hospital at all. A. It is quite likely.

Q. So that your wife would have had the opportunity of meeting 2nd defendant perhaps once at the time of the operation or once before? A. Yes.

Q. After the operation when did you begin going about? A. About June, 1940.

Q. Did you then own a car? A. Yes. I sold that car. I sold it in 1941. I did not tax the car for 1941 at all. I handed it to the garage at the beginning of 1941. 30

Q. The position then is you had no use of a car in 1941? A. Yes.

I know Mr. & Mrs. Namasivayam. They lived in Rosemead Place. Luncheon interval.

Sgd. R. F. DIAS,
D. J.

XXD by MR. OBEYESEKERE (contd.)

Q. When did you first meet Dr. Samahin? A. Soon after my return from England.

Q. That was before you married? A. I think so.

- No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
—continued.
- Q. Had you met him frequently after that? A. Off and on.
- Q. Did you meet him at the Orient Club? A. Not prior to
January, 1940.
- Q. You met him on the race course? A. I may have met him.
- Q. When did your great friendship start? A. End of 1940.
- Q. You know Dr. Samahin is a married man? A. Yes.
- Q. He has a number of children—7 I understand? A. Yes.
- Q. Had you met Mrs. Samahin? A. Yes.
- Q. When? A. In 1940 when we called on her.
- 10 Q. What month? A. I can't say which month it was late
in 1940.
- Q. At that time you were good friends? A. Yes.
- Q. Did Mrs. Samahin return that call? A. I have already said
she did not.
- Q. Dr. Samahin was a friend of the Namasivayams? A. I do
not know that.
- Q. Would it be correct to say that you began meeting him at the
Namasivayam's house? A. No.
- Q. I put it to you that about the middle of 1940 one of the places
20 where you met was Namasivayams' house? A. I deny that
- Q. Certainly at that time you were a frequent visitor there? A.
Yes.
- Q. Sometimes you went alone? A. Very rarely.
- Q. How frequently in 1940 had you been to the Namasivayam's
house alone? A. Very rarely—could not have been more than one or
two occasions at the most.
- Q. You became a friend of the Namasivayams when? A. 1940.
- Q. Independently of Samahin? A. Yes.
- Q. Had you known the Namasivayams before? A. No.
- 80 (To Court :
- Q. What was the attraction at the Namasivayams? A. Nothing.
We both called and they came to our house.
- Q. Would you say that Mr. Namasivayam is a good looker? A.
I do not want to answer a question about other people's looks.
- Q. Would you describe Mrs. Namasivayam as good looks?
- (Mr. Wickremanayake objects. Wants to know how Mrs. Nama-
sivayam's good looks are relevant to this case.

Mr. Obeyesekere says that if the first defendant did not actually misconduct himself with Mrs. Namasivayam he was in love with her.

I ask Counsel how this is relevant to any issue in the case.

He says the 2nd defendant's case is owing to 1st defendant's neglect of the plaintiff, he threw the plaintiff into the company of the 2nd defendant and that the 1st defendant is setting up a false charge of adultery between the plaintiff and 2nd defendant.

I ask whether it is pleaded in the answer.

He says adultery is denied.)

Q. Would you describe Mrs. Namasivayam has good looks? A. 10
 I suppose so.

Q. Were you attracted to her at any time? A. No.

Q. Were you attracted to go to the Namasivayam's house more often because of that fact? A. No.

(To Court :

Q. You heard Counsel's suggestion—have you misconducted yourself with Mrs. Namasivayam? No. Never.

Q. Was such an allegation made against you at any time? A.
 No.)

Q. Did your wife suspect? A. No. 20

When that letter was written to me my wife was ragging me.

Shown P13. Counsel reads P13. That is right.

Q. I suggest that is an explanation to an allegation made against you that you were in love with Mrs. Namasivayam? A. There was no such allegation at all.

Q. Had you taken her out to dinner? That was arranged five days before.

Q. Where did you take her to dinner? A. Fountain House.

Q. What time? A. Soon after the pictures.

Q. After the 9 o'clock show? A. 6 o'clock show. I left her at 30
 home about 9 p.m.

Q. It must have been a short dinner? A. Yes.

Q. In whose car did you take her out? A. In 2nd defendant's car.

Q. As a matter of fact you deliberately arranged for Mr. Namasivayam to go up in his car because you wanted the 2nd defendant's car to take Mrs. Namasivayam out? A. I was not a party to the arrangement. The arrangement was made by Mrs. Namasivayam. Mr. Namasivayam had gone to Bandarawela. She had been soon after a miscarriage and she was advised not to travel. 40

Q. As a matter of fact your child was left in the Namasivayam's house while you went to dinner with Mrs. Namasivayam? A. At the instance of the plaintiff.

Q. You were very anxious were you not to maintain good relations with the Namasivayam family? A. No reason why I should fall out with them. I would not say I was anxious.

Q. Indifferent? A. Just ordinary. I did not want to fall out with anybody.

Q. You remember you went to Jaffna on 1st February? A. Yes.

Q. One of the enquiries you made was in regard to Mrs. Namasivayam? A. Yes. She was ill when I went up.

Q. One of the earliest enquiries you made was in regard to Mrs. Namasivayam? A. Yes, she was ill when I went.

P8 put to witness. I admitted that.

Q. What was the telegram you sent? A. I know her birthday was somewhere in February.

Q. Somewhere in the early part of May was there an incident in your house in which Mr. Namasivayam was involved? A. I was away in Jaffna.

Q. Had you come to know about it? A. Plaintiff wrote to me about it.

Q. What did she write to you about? A. She said there was some unpleasantness at a party in April.

Q. There was some unpleasantness between Mr. Namasivayam and Mr. Fernando? A. Yes.

Q. And in consequence of that your wife had upbraided Mr. Namasivayam? A. I do not know that.

Q. In consequence of which your wife upbraided Mr. Namasivayam? A. I do not know that. What she told me was there was some unpleasantness between Ladislaus Fernando and Mr. Namasivayam.

P16 read to witness. When you said you were getting deeper and deeper into trouble what did you mean? Falling out with people unnecessarily. Merely that? A. Yes.

Q. Not that a scene of that kind would make it difficult for you to go to the Namasivayam's house? A. No.

Q. You were upset about it? A. Yes, that there was a scene in my house.

Q. Merely that? A. Yes.

Q. The very next letter written 3 days' later on the 4th May you say this: "I do not in any way say Sri's behaviour was correct, etc". There you were really explaining what you had said in your earlier letter? A. I was explaining what she had said in reply to the letter.

Q. Can you say what she said? A. She must have suggested that I was upset.

Q. That was the fact? A. It was not the fact. I was upset there was a scene in the house. It did not matter between whom.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
—continued.

Q. I put it to you that you were upset because there was the Namasi-
sivayams who were involved? A. No, far from it.

Q. That would make it more difficult for you to visit the Namasi-
vayam house? A. No.

Q. By Christmas 1940 you say you had become a very good friend
of the 2nd defendant? A. Yes.

Q. Was your father-in-law living with you at the time? A. He
had left immediately before Christmas.

Q. To Kandana? A. Yes.

Q. On Christmas day was he staying at your house? A. He had 10
come down.

Q. You went to midnight service? A. Yes.

Q. And you had arranged for midnight supper? A. Yes.

Q. You had invited 2nd defendant to dinner? A. Yes.

Q. You had only invited Dr. Samahin not his wife? A. Yes.

Q. Can you explain why you asked a married man and not his wife?
A. Because only the 2nd defendant was coming to our place. His wife
had not returned our call.

Q. Mrs. Samahin goes out to dances? A. No. I did not meet
her. 20

Q. Had you met Mrs. Samahin's sisters? A. Yes.

Q. They dance? A. Yes.

Q. What time did you expect to have the supper? A. About
1-30 a.m.

Q. Dr. Samahin did not turn up? A. I think he did later.

Q. In the first instance did he come there? A. He came later.

Q. I put it to you that you expected him at 1-30 you kept the party
waiting and you telephoned him at the Orient Club? A. Because he
was late we telephoned. I do not remember telephoning but if he says so
I will take it. 30

Q. Not once but twice? A. I do not remember doing so.

Q. He was engaged in a game of bridge? A. I do not know.

Q. As he had not come you went in your car with her younger
brother? A. I do not remember.

Q. Did you go or did you not go? A. I did not go.

Q. As a matter of fact you went in a sarong? A. No. My re-
collection is that he came for the supper. I did not go—sarong or other-
wise.

Q. My instructions are that you went to the Club and sent word to
him. Dr. Samahin said he would come later and you returned? A. I 40
did not go.

Q. Dr. Samahin's evidence will be that he did not come to the dinner? A. He did.

Q. He got interested in a game of cards and was there till the early hours of the morning? A. He did come.

Q. Would you be calling any witness to say that Dr. Samahin attended the dinner? A. No, because all the witnesses would be plaintiff's brothers and sisters.

(To Court :

Q. Who served the dinner? A. The then boy.

10 Q. What is his name? A. I do not know.)

Q. Pabilis? A. No.

(To Court :

Q. Was it a hot dinner or cold food? A. String-hopper supper.)

Q. In January, 1941, you had no car? A. I had a car.

Q. You had not the use of the car? A. I gave notice of non-user but I used till the end of the month.

Q. You took a risk of being caught? A. For a short time I was using the car.

Q. My instructions are that in January, 1941, you went about mostly
20 in 2nd defendant's car? A. No.

Q. Frequently 2nd defendant called at your house of an evening you would get into his car leaving him behind? A. No. I would never do that.

Q. Will you deny that on any occasion when 2nd defendant called in his car you left him at home, Merita and your wife all being there and you went in his car? A. No.

Q. My instructions are that you made a beeline for Rosemead Place to Namasivayam's house? A. Utterly false.

Q. It is the fact is it not that when you went to Jaffna on 1st February you went to the station in 2nd defendant's car? A. No, I went
30 in Dr. de Costa's car.

Q. Your wife and your sister-in-law came to see you off at the station? A. Yes.

Q. So did the 2nd defendant? A. Yes.

Q. Your parting words were "look after the girl"? A. Yes.

Q. Did you tell Dr. Samahin to make his car available to your wife?
A. No.

Q. She had no car? A. No.

Q. She was a lady accustomed to getting about a good bit? A.
40 Yes.

Q. What arrangements did you make for her to get about? A. I made no arrangements.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
—continued.

Q. What more likely to ask your good friend Dr. Samahin to place the car at your wife's disposal? A. I did not ask him.

(To Court :

Q. Was the giving of the car included in the general direction " look after the family " ? A. No.)

Q. You left the family in charge of the 2nd defendant ? I have already said that.

Q. The Krishnaratnes were in Jaffna ? A. Yes.

Q. And you were a good friend of theirs ? A. Yes.

Q. You could have asked your wife to stay there ? A. I could hardly do that.

(To Court :

Q. What was your objection to taking your wife and living in the Jaffna Resthouse ? A. It would have involved taking my wife, child and servant. I had to get special permission to stay there.)

Q. You next came to Colombo on Good Friday ?

(To Court :

Q. All the rooms there are double rooms ? A. Yes.

Q. Could your wife and the baby not stay there ? A. The question of expense would also come there. I did not think of taking my family up to Jaffna because I did not think I would be staying there for long and the question would be about closing the house and keeping the servants. I had gone on circuit before leaving my wife behind).

Q. You returned to Colombo on the 9th April ? A. Yes.

Q. You left Jaffna on the 8th and reached Colombo on the morning of the 9th ? A. Yes.

Q. Your wife was not in Colombo ? A. No.

Q. How did you go to the house from the station ? A. Marcus Silva gave a lift.

Q. My instructions are that 2nd defendant called on your house on the 9th morning ? A. No.

Q. Did you have lunch together ? A. No.

Q. Did you go shopping together ? A. No.

Q. Did you call at the Ludowykes ? A. No. I did not meet him on the 9th.

Q. Did you not call on the Ludowykes or have you no recollection ? A. I did not call.

Q. My instructions are that is precisely why you went to Dr. Samahin's because you used his car ? A. No.

Q. Dr. Samahin told you on the 9th that he would be going to Bandarawela ? A. I did not meet him.

Q. I put it to you, you deny having met Dr. Samahin because you also propose to deny that he told you he was going to Bandarawela? I did not meet him. *A.*

Q. You were good friends? *A.* Yes.

Q. You left your family in his charge? *A.* Yes.

Q. In point of fact when your wife was going to Bandarawela your instructions were to ask Dr. Samahin to redirect the letters? *A.* I do not remember; I do not know whether she gave the instructions. Possibly I may have given those instructions.

10 (Mr. Amerasekere marks P33 letter of 18-3-41). Counsel reads P33. That is right.

Q. He was first put in charge of your family next in charge of your letters and you promised to keep him informed of your movements? What more likely than that you met him? *A.* I did not meet him.

Q. Would you have disliked meeting him? *A.* I would not have disliked meeting him. I had nothing against him.

Q. I put it to you that the most probable thing would be you probably informed him of your coming? *A.* No.

20 Q. How did Silva know? *A.* I had written to him to pick me at the station. I knew him very well and asked him to pick me up at the station.

Q. At least it was important for you to inform him you were in Colombo because otherwise he would have sent your letters to Jaffna? *A.* It did not matter because I was going back to Jaffna.

Q. You went to Ratnapura with Mr. A. O. Weerasinghe? *A.* Yes.

Q. Was it your intention to spend the whole of that holiday in Colombo? *A.* Yes, because I wrote to the plaintiff to that effect. I said if I could get a car I would come up to Bandarawela.

30 Q. You knew your wife was not expected to come to Colombo for the Easter vacation? *A.* Yes.

Q. The Namasivayams were in Colombo, were they? *A.* I do not know.

Q. Can you tell me whether Mrs. Namasivayam was in Colombo? *A.* I do not know.

Q. Even now?

Q. Is it not the fact that you altered your arrangements when you knew Mrs. Namasivayam was in Colombo? *A.* Certainly not.

Q. Your original plans were your wife safely away in Bandarawela for you to spend your holiday in Colombo? *A.* My intention was to go to Bandarawela if I got a car.

40 Q. Your original plans were to spend Easter in the company of Mrs. Namasivayam? *A.* No.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
—continued.

Q. Your hopes were dashed to the ground when you found the bird had left? A. No.

Q. Then you accepted the invitation to go to Ratnapura? A. No.

Q. You were really not very anxious to go to Bandarawela were you?
A. I was anxious.

Q. I put it to you that you knew that Dr. Samahin was going that week-end to Bandarawela? A. I did not.

Q. Every Easter Dr. Samahin spends at Bandarawela? I do not know that. That is the only Easter I knew him.

Q. You say when you met your wife at Bandarawela outside Millers 10 in the company of 2nd defendant you gave no particular thought to it?
A. No. I was specifically told he had arrived that morning.

(To Court :

Q. Told when? A. When I went up to Bandarawela. Plaintiff told me that Dr. Samahin arrived that morning.)

Q. Which you say is not the fact? A. I do not know.

Q. Dr. Samahin told you he was going on the 9th and you sent word to her that you would be meeting her sometime during the week-end?
A. I deny that.

Q. One of the people whom you expected to meet was Dr. Samahin? 20
A. No.

Q. She was in the company of her sister? A. Yes.

Q. And Perumal? A. Yes.

Q. You paid no particular attention to it, you had a few minutes' talk and came away? A. Yes.

Q. Were you annoyed that your wife was not in the boarding house when you went? A. No.

Q. Your one idea was to get away? A. No.

Q. Were you anxious to get back to Colombo? You told the Court you had arrears of work? A. I said whatever work I had to do early 30 I had finished off, what was left was not urgent. There was a little work. There were some three or four instruction cases and there were two or three other files.

Q. You reached Colombo on the 14th morning? A. I returned to Colombo on the Saturday evening 12th.

Q. Dr. Samahin returned on the morning of the 14th? A. I do not know. All I know was that when I got back on the 15th there was a letter which he had brought down.

Q. You had not met him between meeting him at Bandarawela and the 15th? A. No. 40

Q. What car did you use on the 13th and 14th? A. I used my mother's car to go to work.

Q. There was no work on Easter Sunday and Easter Monday? A. No. No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
—continued.

Q. Did you go about on the 13th and 14th? I walked to church and I went in Mr. Weerasinghe's car.

Q. Can you recall the contents of the letter which the plaintiff wrote?

A. She said she was sending it by the 2nd defendant and she was glad to have seen me.

Q. What else was there? A. I can't remember.

Q. Except that she was sending it by 2nd defendant? A. She 10 said she was happy to have seen me at Bandarawela.

Q. You went to the office on the 15th and remained in Colombo till the 19th? A. Yes.

Q. In that letter did she say she was coming for your birthday? A. No.

Q. I put it to you the arrangement that she would come for your birthday was made in Bandarawela in your presence? A. No. There was no suggestion at all.

Q. Did she mention your birthday at Bandarawela? A. She may have said that. She had only five days more to go for the end of 20 the holiday.

Q. I put it to you that the question of coming down for your birthday was discussed? A. I deny that.

Q. Was it a surprise to you that she was coming for your birthday? A. Yes, it was a surprise when I got the telegram.

Q. You thought she was a dutiful wife? A. At that time I thought so.

Q. Do you think so now? A. No; now in the light of what I know I think she was coming to meet the 2nd defendant.

Q. She returned on the 18th by car? A. Yes.

30 Q. Do you suggest that she made that trip for the joy of 2nd defendant's company? A. I think so now.

Q. On the 17th you had a party? A. Yes.

Q. Greatly attended? A. A few friends dropped in.

Q. All your special friends were there? A. People who knew about it came in.

Q. Did you ask anybody? A. No.

Q. There were about 10 or 15? A. I think so.

Q. Was 2nd defendant asked? A. He was aware of it as much as anyone else.

40 Q. He went away after the other guests? A. We broke up late and went home. We broke up about 1 or 2 a.m.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
—continued.

Q. The trip next day was arranged at the birthday party? *A.*
Yes.

Q. The original idea was that she should go back by train? *A.*
The question of her going back had not been decided on the 17th morning
when I went to office.

Q. Normally she would have gone back by train? *A.* Presumably
unless she was going to get a lift by someone who was going for the races.

Q. You could not provide her with a car? *A.* No.

Q. Then it was the arrangement for four people to go the next
morning was made? *A.* Yes, at the party. 10

Q. You were glad of that arrangement? *A.* Why?

Q. Because you were left to take Mrs. Namasivayam out? *A.* No.

Q. You could have joined the party? *A.* I was in office, I could
not.

Q. What day of the week was the 18th? *A.* Friday.

Q. You might have got the Friday and Saturday off? *A.* I was
leaving on Saturday night for Jaffna.

(To Court :

Q. The arrangement was that Namasivayam was to drive? *A.*
It was his car. Miss Ludowyke, plaintiff, 2nd defendant and Namasivayam 20
were going.

Q. Why was Namasivayam going without his wife? *A.* She had
a miscarriage and she was not travelling.

Q. When did she have the miscarriage? *A.* In March).

Q. How did you know that? *A.* Plaintiff wrote that.

Q. You did not hear that from Mrs. Namasivayam? *A.* No.

Q. You do not know what part of March Mrs. Namasivayam had the
miscarriage? *A.* No. Plaintiff wrote to me.

Q. That must have been about the 11th March? *A.* Yes, may
be. 80

Q. She was well enough to come to your birthday party? *A.*
Yes. But I took it travelling was not good enough.

Q. It was not said it will be a good thing if Mrs. Namasivayam can
go? *A.* I was not there when the arrangements were made. I was
only aware of what happened after the arrangements were made.

Q. This was talked at, at the birthday party? *A.* Yes, but we
were not there altogether.

Q. You did not tell Mrs. Namasivayam why do you not make this
trip yourself? *A.* It was no concern of mine.

Q. Did you ask her to remain? *A.* No. 40

Q. You got the use of 2nd defendant's car? *A.* Certainly not.

Q. When did you arrange to take Mrs. Namasivayam out for dinner?
 A. On the 17th Mr. Namasivayam himself suggested it.

I was not concerned where Miss Ludowyke stayed. As far as I was concerned the plaintiff had her room in Mr. & Mrs. Solomons' boarding and I thought she was going there.

No. 80
 Defendant's
 Evidence
 Stanley,
 Alles
 Cross-
 examination
 —continued.

Q. Were you aware of the arrangement that your wife and Miss Ludowyke was to stay at Jayawickrema's? A. No.

Q. It was difficult for your wife and Miss Ludowyke to stay the night at the Solomons'? A. No.

10 Q. Who was going to provide for Miss Ludowyke's expenses? A. I do not know. Those arrangements were no concern of mine.

Q. Whose girl friend was she? A. I do not know.

Q. In one of the letters you say she is the 2nd defendant's preserve?

P22 put to witness. You call Miss Ludowyke Teddy? Yes.

"Who gave you the idea that I have a soft corner in my heart for Teddy. Good gracious, that is Sam's preserve. I would not dare treading on his preserves." I did not intend it to be taken in earnest. I meant she was his girl friend.

20 Q. In that group you thought that the 2nd defendant's attentions were directed to Teddy? A. Yes.

Q. What does Miss Ludowyke do? A. She was at home then.

Q. Would this be correct that in July, 1941, so far as your suspicions went in this company the 2nd defendant was paying attentions to Teddy not to your wife? A. I had no suspicions at all, I have already said.

Q. 2nd defendant's attentions were focussed on Teddy? A. We used to rag him about it.

Q. Your gang used to rag him about it? A. Plaintiff herself used to do it.

30 Q. Your wife apparently thought you had a second line? A. I am not responsible for her thoughts.

Q. Did she think you were poaching on Samahin's preserves? A. Yes.

Q. You are very versatile? (No answer).

Q. I suggest that you gave your wife cause to believe that you were paying attentions to Miss Ludowyke? A. No. From April to July there was no occasion for me to meet Miss Ludowyke.

Q. In your own mind you thought Sambo was taking Teddy to Bandarawela? (No answer).

40 Q. Did you give your mind to it at all? A. No. I did not think there was anything wrong in their going.

Q. Did you think Dr. Samahin's interest was in Teddy? A. Not particularly.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
— continued.

Q. At all? A. No. We were all friends.

Q. It is said that a telegram was sent to the Jayawickremas? A.
Yes.

Q. Did you write out that telegram? A. No. I have already
said that.

Q. Do you remember in examination in chief you said that you had
a certain telephone conversation about the 8th May with your wife? A.
Yes.

Q. You particularly recall that because she had not written to you
for some time—some number of days? A. Yes, for some days. 10

Q. For about 10 or 12 days? A. 2 or 3 or 4 days.

Previous evidence put to witness. You remember you were
asked about a certain letter and you said: "I might mention that I did
not receive a letter from my wife, etc". That is a correct statement of
fact? Yes.

Q. That was about the 8th May? A. Yes.

Shown P18. She had written on the 2nd May? A. Yes.

Letter of the 7th May, 1941, marked P34. She must have written to
you again on the 6th? A. Yes.

Then P28. She has written to you on the 2nd, 6th and 8th? A. 20
Yes.

Q. You were suggesting that at that time your wife was displeased
with you or your mother and had not been writing for some time? A.
I never said that.

Q. What was the point you were making that she had not written
for some time? A. I said I telephoned because I expected a letter
and as I did not receive one I rang up. I had not heard for 2 or 3 days
and I therefore rang up.

Q. I put it to you that you were suggesting that your wife had not
written to you for some time because of some of the statements your 30
mother had made? A. I never said such a thing at any time.

Q. That is not your case? A. No.

Q. At that date you were unprepared to listen to any rumours against
your wife and 2nd defendant? A. Yes.

Q. That state of things continued till the end of November? A.
Yes.

Q. If anybody told you before November, 1941, that there was any-
thing improper between your wife and 2nd defendant you would have
resented it? A. Nobody said it.

Q. If anybody said it? A. I would have resented it. 40

Q. Because you were quite satisfied in your mind that it was grossly
untrue? A. Because I had implicit confidence in both.

Q. Because you knew that 2nd defendant was seeing a good deal of your wife's company? A. She was seeing a good deal.

Q. While you were away your sister-in-law was there the whole time? Yes.

Q. You have an aunt I think? A. She has.

Q. Her name? A. Anne. She is nearly 50. She is a Miss Neydorf.

Q. She was there for most of the time? A. She was not staying with me at the time.

10 Q. While you were staying in Jaffna she made occasional visits to your house and stayed there? A. No. The plaintiff never wrote to me that her aunt was there.

Q. Are you unaware that your wife's aunt used to stay frequently in the house? A. I am still unaware of it because plaintiff at no time told me.

Q. Your father was on visiting terms? A. My father was dead.

Q. Her father? A. I do not know.

(To Court :

20 Q. Is it your case that this misconduct took place at Merlton with Merita's knowledge? A. She must have known about it but I would not take it upon myself to say how much she knew).

Q. While you were away in Jaffna you did not know that your aunt had paid a visit? A. I can't remember.

Shown letter of 1st May (letter read). A. Because it was her niece's birthday she had come for it.

Q. A while ago you pretended to have no recollection about information conveyed by your wife that your aunt visited? A. That is perfectly true.

30 Q. Now the letter is put to you, you recall it? A. It must be that she has informed me. I have not seen these letters since I wrote them.

Q. You said she came for some niece's birthday? A. Merita's birthday was on 28th April.

Q. Did you make a particular point of the fact that 2nd defendant wrote to you of your wife's illness? A. I do now.

Q. You were on very friendly terms with the 2nd defendant? A. Yes.

Q. He used to write to you now and again to Jaffna? A. Not before July.

40 Q. Do you suggest he did not write one letter before July? A. Yes.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
—continued.

- Q. Was this the first letter he wrote to you? A. Yes.
- Q. He wrote to you frequently? A. No.
- Q. In one letter he wrote as your wife happened to be ill he mentioned that fact? A. No. This is the first letter received from the 2nd defendant.
- Q. Your reaction to that letter from the 2nd defendant was you asked your wife to convey your thanks to him? A. Yes.
- Q. You say that the 2nd defendant was not writing to you? A. Yes.
- Q. Were there race meets in Colombo while you were away at Jaffna? A. Yes.
- Q. Of course you are a consistent punter? A. No. I put a few trebles.
- Q. Is it not the fact that you requested him to put money on trebles? A. In August.
- Q. Before August? A. No.
- Q. Think hard? A. I do not remember it.
- Q. Are there races in June? A. There are races from May, June, July.
- Q. You regularly put money on trebles? A. When I want to put on trebles.
- Q. My instructions are that you used to write to 2nd defendant to put money on particular horses? A. No, never.
- Q. Particular trebles? A. No. In August I did.
- Q. Can you recall whether you put any money during that period through the 2nd defendant or anyone else? A. No.
- Q. What makes you so certain about it? A. Because I was putting money only in August.
- Q. If you were in Colombo you would go to the races? A. I have been without going to the races. 30
- Q. Occasionally? A. Not often.
- Q. When in Colombo you went to the races more frequently than you did not? A. From October last year I did not go at all for the races.
- Q. In point of fact my instructions are your liabilities were incurred as a result of your enterprises on the races? A. Certainly not.
- Q. You have not got the letter of 2nd defendant? A. No.
- Q. He wrote that your wife was not well? A. No. He suggested that I should come down for the week-end.
- Q. And see your wife? A. Yes. 40
- Q. He did not suggest any other activity? A. No.

Q. You were overburdened with work that you had no time to come down? A. No.

(To Court :

Q. How many miles is it from Colombo to Jaffna? A. 200 miles.

Q. But of course you came for cup day? A. Yes.

Q. That you were able to arrange? A. Yes, because I had applied for leave.

Q. To come on the Saturday night and go on Sunday you do not want leave? A. When you are on circuit you cannot come down without permission. Besides I cannot spend two successive nights in the train. I cannot sleep in the train at all.

(Mr. Obeyesekere calls for the letter of 17th July. Handed by Counsel for plaintiff to 2nd defendant's Counsel. It is marked 2D1.)

Q. You have a dog by the name of Invader? A. Yes.

Q. Unfortunate name? (No answer).

Q. The other dog was Whisky? A. Yes.

Q. To counteract the Invader you had Whisky. You were in that letter asking your wife to tell something which was untrue to evade tax? A. Yes.

20 Q. At this time it is correct that your father-in-law was your *bette noir*? (No answer).

I do not remember the draft letter. She wrote it and I corrected it.

Q. You have not the foggiest idea of the letter? A. No.

Q. "It hits the old fool well and hard"? A. Yes.

Counsel reads the letter. You remember the letter? A. Yes.

Q. Your interest in horse racing was very casual? A. I would not say so.

Q. Do you sometimes get tips from particular people? A. Sometimes I got tips.

30 Q. That was why you went down Rs. 10,000? A. My debts had nothing to do with racing.

(2D2 handed by plaintiff's Counsel to 2nd defendant's Counsel.)

Q. Your position was that in June and July you were not putting any money on trebles? A. I did not say so. I said I did not send any money to 2nd defendant.

Q. Were you then putting money on races? A. If I got the chance I always did.

Q. In May or June do you recall putting any money on races? A. May be I did.

40 Q. Apparently she may have written that she got the tips late. And could not make money for you? A. Why for me? For herself,

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
—continued.

Q. You came back on the 8th August? A. On the 9th August.
I returned on the 10th night.

Q. During that time you met Dr. Samahin? A. Yes.

Q. Probably I think you met him at the Cup race? A. At the bungalow.

Q. You were very cordial to him? A. Yes.

Q. You were glad of meeting him? A. Yes.

Q. At that point of time you had no cause to suspect any treachery on his part? A. None whatever.

Q. Up to that time you had not observed yourself anything about the behaviour of your wife to 2nd defendant or 2nd defendant to your wife.....? A. Not in my presence.

Q. At no time up to the 19th November had you observed any undue familiarity? A. I do not quite know what you mean by undue familiarity.

Q. Love making? A. No.

Q. Do you suggest that the act of going out.....

(To Court :

Q. You have not seen anything improper between your wife and 2nd defendant? A. No.) 20

Q. In October your only complaint against your wife was that she did not see to the feeding of the child? A. Feeding and looking after the child generally. I have already said that.

Q. You did not in your mind at that time connect the alleged negligence of your wife with the 2nd defendant? A. No.

Q. If during that period he was going about with your wife it was always with your approval? A. Certainly.

Q. In point of fact when they did go out to such places as dances they were always in a set or group? A. I do not know. I do not know with whom they were when they went alone. 30

(To Court :

Q. You trusted this man and your wife? A. Absolutely and implicitly.

Q. If they wanted to misconduct themselves they could do it? A. Yes.

Q. When Dr. Wickremasooriya came and said something you began to suspect? A. Yes.)

Q. At that point of time you were satisfied in your own mind when they went out together they were in other company? A. My sister-in-law had left the house in August. 40

Q. There were the Ludowykes who were constant companions of these people? A. Yes.

Q. Sometimes they went out with the Namasivayams? A. Not after August.

Q. If in October you thought there was something objectionable you would have spoken to Dr. Samahin yourself? A. I spoke to him in September or October.

Q. That was not a protest against the 2nd defendant's conduct but a protest against your wife's conduct about neglecting the child? A. Yes.

Q. At that time you were not prepared to impute anything wrong to the 2nd defendant? A. Yes.

Q. As a matter of fact for the sake of the child you said do not take plaintiff about? A. Yes.

Q. Your view of the matter was the party to blame was your wife? A. Yes.

Q. Not the 2nd defendant? A. Yes.

Q. You had an invitation to the Police dance? A. Yes, both of us had.

Q. You knew Dr. Samahin too had an invitation? A. No.

Q. You knew he would be going? A. No.

Q. Did you expect him to go? A. No.

Q. Dr. Samahin never missed a dance of any kind? A. I do not know.

Q. He is a very keen dancer—dances very much more than you? A. May be, I do not know.

Q. In point of fact he used to go to the dances at the G. O. H.? A. So, I believe.

Q. And he has been doing that for quite a long time? A. I can only speak to the period from October, 1940.

Q. From October, 1940, to December, 1941, he used to go to dances regularly? A. Yes.

Q. At least once a week? A. May be.

Q. At any of those times have you seen his wife there? A. No.

Q. You remember the Police dance 1940? A. Yes.

Q. You went to that dance together? A. Probably.

Q. I put it to you that you knew 2nd defendant was going to the dance in 1941? A. No.

Q. He called at your house on that day on the 5th December about 7 o'clock? A. I do not remember it.

Q. Will you charge your memory? A. I believe from the time I brought the plaintiff back she was lying in bed and I was alone at home. I am almost certain he did not come.

No. 30
 Defendant's
 Evidence
 Stanley
 Alles
 Cross-
 examination
 —continued.

Q. My instructions are that the 2nd defendant came there about 7 p.m. and he told you he was going to the dance? A. No.

Q. In fact he asked you to come with him? A. No.

Q. And you put him off saying you had a lot of work and were not going to the dance? A. That is absolutely false.

Q. You deny you had a drink together? A. I deny.

(To Court :

Q. You were going with Mr. & Mrs. Namasivayam? A. Yes.)

Q. Is it your position that you did not offer him a drink? A. He did not come. 10

Q. You are prepared to contradict him if he swears that on his way to the Orient Club he dropped in about 7 o'clock? A. Yes.

Q. That he had a drink with you and that you told him that you had more work than you could do and to excuse you? A. I deny that.

Q. Were you in the department at that time? A. No.

Q. Of course then you would not be overburdened with work? A. No.

Q. Is it the fact that Mrs. Namasivayam telephoned to you after Dr. Samahin left? A. No.

Q. On the evening of the 5th December? A. Mrs. Namasivayam 20
 at no time telephoned to me.

Q. Not on that day or at any time? A. No.

Q. You are hurt about it? A. Certainly I resent the suggestion.

Q. My instructions are that later that night your wife telephoned to my client 2nd defendant and said you were going out with the Namasivayams and that you had asked the doctor to take her to the dance? A. On the contrary I had said she was not to go out—that was when I was going out.

Q. There was a conversation about the dance that morning between you and your wife? A. Yes. 30

Q. You were wanting to go to the dance and you wanted her not to go? A. Yes.

Q. The dispute was whether both of you should go or both of you should not go? A. No.

Q. Her position was either the two of you must go or neither of you should go? A. No such question was discussed at all.

Q. She in view of previous events was not prepared to go in the company of the Namasivayams? A. The question was never discussed.

Q. I understand your wife had gone away to her aunt's house in 40
 your absence? A. Yes.

Q. That was by way of protest for your refusal to go to the dance?
A. I do not know.

Q. You brought her back home? A. Yes.

I asked her to come back home. She said she was not coming till I persuaded her to get into the car and asked her to come. Not much coaxing was necessary. I told the child was alone and she must come and look after the child.

Q. At the aunt's house was there any discussion about going to the dance? A. No.

10 Q. Before she agreed to come to you was there any question of her going to the dance? A. No.

Q. After the lady had left the house because you were not prepared to let her go to the dance then I do say that subject must have been the matter of discussion? A. I am not conceding that she left the house because I did not allow her to go to the dance, she left.

Q. Do you suggest that you do not know why she left the house? I do not know why she left.

Q. You had a disagreement with your wife? A. We had a discussion.

20 Q. You were not agreed? A. No.

Q. When you left for the office she was in some kind of a mood?
A. Yes.

Q. And it was to your intense surprise you found she was not at home?

(To Court :

Q. What was the discussion? A. About my going to the dance.

Q. Was there any further discussion? A. No. I told her in her condition she must not go for the dance. That is why she had apparently left the house.)

30 Q. Did you say you were going with the Namasivayams? A. I told her earlier about it.

Q. What was the precise objection she made on the morning of the 5th? A. She wanted to go to the dance.

Q. And you would not let her go? A. No.

Q. She wanted to go to the dance? A. Yes.

Q. With you? A. Probably with me.

Q. A very natural thing I suggest? A. Yes.

(To Court :

Q. In chief and to Mr. Amerasekera you gave three reasons? A.
40 Yes. One was in that condition I did not want her to go about; (2) by that stage I had decided she should live down all the scandal; and (3) was the haemorrhage in regard to her first confinement.)

Q. Your wife was not pleased? A. No.

No. 30
 Defendant's
 Evidence
 Stanley
 Alles
 Cross-
 examination
 —continued.

Q. When you found she had left the house did you connect her leaving the house in that way with what had happened in the morning?

A. Yes.

Q. Your purpose in going to the aunt's house was to bring her back?

A. Yes, besides she had left the child alone with servants.

Q. I put it to you the most natural thing would be for you to say "Why did you come away like that"? A. Yes, she said because she wanted to go to the dance.

Q. Then it is correct that at your aunt's house the subject of her going to the dance was stated? A. It was when I brought her home 10 that this question was discussed.

Q. Did you ask her at the aunt's house why she had come? A. No.

Q. All you did was to ask her to come because the baby was alone? A. Yes.

Q. Is it your evidence that beyond that request there was no conversation between you? A. No, none at all. I only had to persuade her to get back.

Q. You must have had to talk to her? A. It was no discussion at all but I had to persuade her because the baby was alone. 20

Q. You kept repeating that sentence? A. Yes.

Q. She did not say "I will come back if you let me go to the Police dance"? A. She laid down no conditions.

Q. When she came back to the house she started all over again? A. Yes.

Q. Insisting on going to the dance? A. Yes.

Q. Insisting on going with you? A. Yes.

Q. You preferred to go alone with the Namasivayams? A. I did not want her to go to the dance because of her condition.

Q. The condition which you say existed in her first pregnancy did 30 not appear in the second? A. I do not know what happened after January.

Q. There was no such abnormality? A. No.

Q. Was there any need to take precautions? A. I always had it at the back of my mind.

Q. Dr. Wickremasooriya did not suggest any particular precaution for her when he saw her in November? A. No.

Q. Apart from the prescription there was no particular caution mentioned at that time? A. No.

Q. You say Dr. Samahin had not called? A. No. 40

Q. What time did you leave the house? A. About 9 p.m.

Q. After dinner? A. Yes.

Q. Did your wife join you at dinner? A. Yes.

Q. Only the two of you sat for dinner? A. Yes.

Q. My instructions are that plaintiff telephoned to the 2nd defendant at the Orient Club shortly about 9-30 and informed him that you had wanted her to go with him? A. No.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
—continued.

(To Court :

Q. Is this the first time you hear of it? A. Yes.)

Q. Was it the arrangement that eventually your wife was allowed to go to the dance on your suggestion that she should go with Dr. Samahin?
10 A. No.

Q. And that she went with Dr. Samahin with your full knowledge and consent? A. No.

Q. And what is more that they could join the Ludowykes? A. No.

Q. Actually your wife and Dr. Samahin were in the company of the Ludowykes? A. Yes, and your proctor and his brother.

Q. They were in the company of Mrs. and Miss Ludowykes? A. Yes.

(To Court :

20 Ludowyke was working in the bank.)

Q. There were a number of other people? A. Yes.

Q. Your wife, Dr. Samahin, Mrs. Ludowyke, Misses Ludowykes, Mr. Fernando and his brother? A. Yes.

Q. You did not actually see your wife and 2nd defendant arriving at the dance? A. No.

Q. All you can say is you saw her at the dance and in the company there was Dr. Samahin, the Ludowykes and the Fernandos? A. Yes. She told me she had come with him.

Q. You said not a word to the 2nd defendant at the dance?
80 No. A.

Q. But you had four dances with your wife? A. Yes.

Q. I put it to you if the case is as you suggest it is that your wife had come to the dance against your expressed orders and you found that your good friend, Dr. Samahin, helped her to go against those wishes, why did you not ask Dr. Samahin what the devil do you mean by bringing my wife? A. I did not want to create a scene.

Q. Or, for instance, why did you not tell your wife why did you come here, come along? A. I did not want to create a scene. If I said that it would not have stopped at that if she was so keen to come.

40 Q. It made you very very angry? A. Yes.

Q. You gave him a drink? A. Yes.

Q. He stood a drink? A. May be.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
—continued.

Q. On the other hand you showed your approval of your wife's presence by dancing four times with her? A. For appearances sake I did dance with her.

Q. What is the appearance you had to keep up? A. There was sufficient talk and if I did not dance it would have added to it.

Q. You had gone in whose car? A. Mr. Namasivayam's car.

Q. How had you left your house? A. In the car.

Q. Did the car come for you? A. It came for me.

Q. Then you went in the car to the Namasivayams and from there you went? A. Yes. 10

Q. It is very unusual conduct on your part to say not a word then to the 2nd defendant at the dance and not said a word to your wife? A. I said why I did not speak to the plaintiff.

Q. I put it to you that it supports my instructions that your wife went there with your full knowledge and approval? You were in very good mood that time? No answer.

Q. I understand you do not dance very many dances? A. Yes. because I have a defect.

Q. What is the pleasure if you do not dance? A. I dance but not so much as others. 20

Q. That day you had 8 dances evenly distributed between your wife and Mr. Namasivayam? A. Yes. I danced with Miss Peter.

Q. As a matter of fact in your party was Miss Ruby Peter? A. Yes.

Q. Mr. Namasivayam had brought her? A. She came with the Namasivayams. She was there in the house.

Q. Are you aware that Miss Peter had left her father's house at the time? A. Yes.

Q. What time did you leave after the dance? A. About 3-30.

Q. You do not know at what time your wife left? A. No. 30

(To Court :

Q. At the time you left where was your wife? A. At one point I missed her.

Q. When did your wife leave? A. I do not know.

Q. When you got home was your wife at home? A. Yes.)

Q. I put it to you that one reason why you did not want to take your wife to the dance was you were a party of four? You and Mrs. Namasivayam were a pair and Mr. Namasivayam and Ruby Peter were another? A. There were other combinations as well.

Q. Your conduct that day was actuated by your desire to prevent 40 any physical consequence by her going to the dance? A. Yes. She had also said that a woman in that condition should not go to dances.

Q. You saw her at the dance? A. Yes.

Q. Why did you not excuse yourself from Namasivayams or join yourselves together? Or did you leave your wife to go back the way she came? A. I was going to find fault with her when I went home. I had no conveyance of my own.

Q. You could have got two rickshaws? A. Yes.

Q. Your desire was to stay in your quartet? A. If I wanted to do that I need not have danced with plaintiff.

Q. You did not want it said that Mr. Alles had been dancing the whole night with Mrs. Namasivayam? That was the appearance you wanted to keep? A. No.

Q. Did you ask her to go home? A. No, because that would have led to my asking why she had come.

Q. When you spoke about the appearances you had in mind the stories you had heard? A. Yes.

Q. So as to counter those stories you thought you had better dance with her? A. Yes.

Q. Did you not think then one further way of preventing talk would be to see your wife home yourself? A. It was not likely she would go at my instance as she had gone against my wishes.

Q. While you were dancing what did you talk? A. I asked her why she came and she said she came.

Q. You did not say "Merle I had better take you home or better let me know when you want to go home?" A. No.

Q. You took no interest in her? A. I assumed she would be going home. If I asked her why she came to the dance one thing would have led to another and it would have created a scene.

Q. Where was the dance? A. Town Hall.

Q. You did not seek such an opportunity? A. No.

30 Q. Did you tell Dr. Samahin "Come Sambo have a drink"? A. I met him at the bar.

Q. You spoke to him? A. Yes.

Q. It was the easiest thing you could have told him "You should not encourage my wife I do not want her to go to dances"? A. No. I was concerned about giving instructions to the plaintiff. I did not want to have any discussion with 2nd defendant.

Q. Though previously when you knew the child was being neglected you had told him do not take my wife about? You gave him orders then? A. I did not give orders.

40 Q. Consistently with that attitude why did you not tell him at the Police dance I do not want my wife to come to the dance, why did you bring her here.....? The answer was because the obvious reply would be because you wanted me to bring your wife? A. No.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
—continued.

Q. You gave him a drink because you approved of what he did?
A. No. He may have given a drink or I may have given or someone else may have given.

Q. At a certain point of time you did not see your wife? A. Yes.

Q. After that point of time you did not see the Ludowykes either?
A. Yes.

Q. Are you quite certain? A. I am quite certain. I talked to them.

Q. Can you remember whether Mr. Leslie Fernando was still there or Mr. Ladislaus Fernando? A. They were all there. 10

Q. You taxed your wife? A. When I got back.

Q. When next did you meet Dr. Samahin? A. Probably on the Saturday the 6th.

Q. Did you tell him a word? A. I did not discuss with him really at any time.

Q. You said that in October you told him not to take your wife about? A. Yes.

Q. Because the child was being neglected? A. Yes.

Q. On the night of the 5th December when you saw him at the dance with your wife you were very annoyed? A. Yes. 20

Q. You did not want to create a scene and you did not tax him with it? A. Yes.

Q. You met him the next day in your house? A. Yes.

Q. Why did you not when you met him in the privacy of your house?
A. As I said yesterday if I said that plaintiff would have become aware of it and she would have become more obstinate.

Q. To prevent your wife being obstinate you were prepared to overlook the conduct of 2nd defendant? A. Yes, because I was still hoping that she would see sense and would listen to what I said.

Q. At that time you had suspicions about the paternity of the child? 30
A. Yes.

Q. You were prepared to accept that you were the father of the child?

Q. At that point of time you resolved the doubt in your favour?
A. I would not say that. I was in doubt as to the paternity of the child.

Q. Your doubts were raised purely by the statement of Dr. Wickremasooriya that the child was probably a five-month child—that she was in the fifth month? A. Yes.

Q. Then all that you could say is that having regard to the fact that you returned to Colombo on 8th August—your only doubt was due to 40 that? A. Yes.

Q. Apart from that you had no reason to suppose that your wife had misconducted herself? A. No.

Q. Or that 2nd defendant was responsible for any misconduct? *A.* Yes. No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
—continued.

Q. All that you could say was that you returned on 8th August and that you can't be the father of the child? *A.* Yes.

Q. Your state of mind was this and you had no reason to suppose it was Dr. Samahin? *A.* Yes.

Q. Your only doubt being that you did not tell 2nd defendant when you met him on the 6th? *A.* I had suspicions but I had no legal proof.

Q. If you had your suspicion why did you not tell the man.....?
10 *A.* I was not going to say anything when I had no definite proof.

(To Court :

Q. Can you remember the last date you had marital intercourse with your wife? *A.* Somewhere in November before Dr. Wickremasooriya's visit.

Q. You have never had intercourse after that? *A.* No.

Sgd. R. F. DIAS,
D. J.

Case postponed for tomorrow.

Intld. R. F. D.,
D. J.

20

16th December, 1942.

Counsel as before.

STANLEY ALLES—Sworn.

Q. Can you say at whose instance Dr. Wickremasooriya was called in? *A.* I telephoned.

Q. Was it your idea? *A.* Plaintiff told me she would like to see him.

Q. She had told you she was pregnant? *A.* She had told me that earlier. She suggested that Dr. Wickremasooriya should be called in.

30 Q. That is because of her condition? *A.* Yes.

(To Court :

Q. Did she say why she wanted the doctor? *A.* No.)

Q. Dr. Wickremasooriya had attended on her on the occasion of her first pregnancy? *A.* Yes.

Q. And was therefore conversant with her case? *A.* Yes.

Q. He delivered the first child? *A.* Yes.

Q. He also attended on her during her whole pregnancy? *A.* Yes.

Q. Who delivered the second child? *A.* Dr. Wickremasooriya I understand.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
—continued.

Q. On the occasion of her first pregnancy your evidence is that her condition was such that she had to lie on her back all the time? A. Yes.

Q. And I suppose precautions had to be taken? A. Yes.

Q. Were such precautions necessary on the occasion of the second pregnancy so long as you lived with her? A. No.

Q. There was nothing abnormal? A. I always had the fear that there would be a recurrence of the first troubles.

Q. If the plaintiff had not suggested that Dr. Wickremasooriya should be called in you would not have taken any steps yourself? A. No. 10

Q. Did you communicate what Dr. Wickremasooriya told you to anybody? A. No.

Q. To your wife? A. Yes, and she said he may have made a mistake.

Q. Apart from her to anybody else because you said what he told you aroused your suspicion? A. I did not say suspicion I said I had doubts.

Q. You had your doubts as to whether you could be the father of the child? A. I was worried because of his statement.

Q. Your examination in chief is your made discreet inquiries? A. 20 Yes.

Q. What were they? A. Found out from friends what had happened in my absence.

Q. Who are the friends? A. I have already said I was reluctant to disclose their names.

Q. You remember the Silver Wings Carnival? A. Yes I remember the Sunday.

Q. 2nd defendant had lunch with you at Merlton that Sunday? A. I have no recollection.

Q. Do you deny that? A. I have no recollection. 30

Q. You have already said he came that morning? A. I have no recollection that he stayed for lunch. That Sunday he came in the morning and left on his way to the Club.

Q. Do you say he did not stay to lunch? A. That is my recollection.

Q. If he swears he stayed would you contradict him? A. I would.

Q. That morning when he called was the subject of the Silver Wings Carnival discussed? A. No.

Q. Whether you would like to go to the carnival or whether any 40 others were going? A. No.

Q. Did you ask 2nd defendant whether he was going? A. No. The carnival was not mentioned at all. I am quite certain.

Q. My instructions are that actually 2nd defendant invited you to come to the carnival that Sunday? A. He did not.

Q. And you replied that you were very busy and that you could not go? A. That is not correct.

Q. That is untrue you say? A. Yes.

Q. Did not the 2nd defendant come to your house that Sunday evening the 7th? A. No. He did not come that evening at all. I was at home that Sunday evening all the time I did not go out. I went to the carnival at 8.

10 Q. Before you went did not the 2nd defendant call? A. No.

Q. My instructions are that on his way to the Orient Club he did call? A. He did not. I went to the carnival with the Namasivayams. They sent their car for me.

Q. Did your wife express a desire to go to the carnival? A. She did not.

Q. Mr. Namasivayam sent their car because they did not want to call? A. I do not know that they sent the car.

Q. That same thing happened at the Police dance? A. Yes.

Q. It was simple to call on the car and go with you? A. Either
20 way it was simple.

Q. Will you deny that they did not call on either occasion because they did not want to come to your house? A. I cannot say.

Q. Would you deny it? A. I would.

Q. The state of the feelings between them and your wife were not cordial? A. They were because she accepted a present in December.

Q. I put it to you that after the incident in May Namasivayams were not friendly? A. I would not say that.

Q. What is more your wife objected to your association with Mrs. Namasivayam? A. At no time did she object.

30 (To Court :

Q. What was the present she gave? A. Some cloth and the plaintiff went back to Chandiram's that same day and changed it at once.)

On the 5th I had arranged to go with the Namasivayams to the carnival.

Q. Did the party consist of the same quartet? A. Mr. Namasivayam, Mrs. Namasivayam, myself and Ruby Peter.

Q. Did you tell your wife that you made that arrangement? A. I did, I told her on the morning of the Saturday and she did not say anything. It was after the quarrel I had with her about going to the Police
40 dance.

Q. You ask the Court to believe that despite that displeasure that when you told your wife you were going to the carnival with those people she said nothing? A. Yes. She raised no objection.

No. 30
 Defendant's
 Evidence
 Stanley
 Alles
 Cross-
 examination
 —continued.

- Q. Was not that unusual? A. It is the fact.
- Q. She did not express a desire to go to the carnival at any time?
- A. No.
- Q. There was a dance floor at the carnival? A. Yes.
- Q. Was that one of the attractions with you? A. No, I wanted to go round and see the thing.
- Q. Incidentally with Mrs. Namasivayam, that was another? A. No.
- Q. Do you ask the Court to believe that at the time you went to the carnival at 8 o'clock your wife had not told you anything about going to the carnival? A. That is so.
- Q. She did not try to prevent you from going? A. No.
- Q. She did not ask to go with you? A. No. I am quite certain. I had told her on Saturday where I was going at 8 o'clock, also I told her where I was going.
- Q. Did she know that Namasivayams' car called for you? A. Yes.
- Q. Where was she at the time? A. Somewhere in the house. I do not know where she was. She did see me leave. I told her I was leaving. I always tell her when I get out of the house.
- Q. You said Merle I am going away, be a good girl and go to bed? A. No I did not say that.
- Q. On Sunday you were very friendly? A. Quite normal.
- Q. The row of Saturday morning had just blown over? A. Yes.
- Q. And you had forgotten things? A. Yes.
- Q. You regarded her going to the Police dance in those circumstances something that out of pique? A. May have been that. Having told her what I had to say about it I had dropped the matter.
- Q. Your position is that on Saturday morning she for the first time proved a defiant wife? A. Yes.
- Q. For the first time she said I will do what I like and go where she liked? A. Yes, she said that on Saturday morning and with whom she liked and that she was not going to take orders from me.
- Q. Were you in the habit of issuing orders? A. She considered them orders.
- Q. Were you a dictatorial husband? A. Never at any time.
- Q. You were a passive sort of person? A. I do not know that.
- Q. In the sense you did not assert yourself, for instance you would see your wife going with another take it for granted? A. Well, I did not object because I had the most implicit faith in both. I did not consider myself a passive husband but a trusting husband.
- Q. Namasivayam did not object to you going about with his wife? A. I did not go about with his wife except on one occasion when he suggested it and besides my child was also staying there at the time.

Q. You left the child at home? A. I did not leave the child at home she was sent there by the plaintiff herself.

Q. Are you aware that your wife on the Sunday evening telephoned the 2nd defendant and asked him to come and take her to the Silver Wings Carnival? A. I am not.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
—continued.

My instructions are that at the Sunday lunch and again on Sunday evening the question of going to the carnival was discussed and you expressly told the 2nd defendant I am going with the Namasivayams, will you take my wife to the carnival? A. That is absolutely false.

10 Q. It was a similar arrangement to that of the 5th of December?
A. No there was no such arrangement.

Q. Your wife had no car? A. No.

Q. One of the reasons why you had to make arrangements of this kind was because you had no car? A. No.

Q. 2nd defendant had a car and it was possible for him to take her?
A. But there was no suggestion that she should go with him. I did not meet my wife at the carnival. I saw her there. I did not speak to her. When I saw her she was seated with some friends.

Q. Who were the friends? A. I cannot remember.

20 Q. She was not alone? A. No there was a crowd there.

Q. And amongst that crowd was the 2nd defendant? A. Yes.

Q. Who else, the Ludowykes? A. I do not remember seeing them.

Q. On the occasion of the Police dance you kept up an appearance by dancing with her four times? A. Not so many as four times but I danced with her.

Q. They were distributed equally between Mrs. Namasivayam and your wife? A. Probably that was so.

30 Q. Why did you not try to keep up appearances at the carnival?
A. At that stage I had decided this was going too far her flouting me.

Q. And you were prepared to take the consequences? A. Yes.

Q. That is to say she was taking the bit between her teeth so to speak and you were going to prevent it if you can? A. Yes.

Q. At the time you saw the 2nd defendant and your wife you came to the conclusion that they had come together? A. Yes.

Q. You knew that he had come there with her? A. I presumed so.

Q. Did you speak to the 2nd defendant? A. No. I did not speak to either of them there.

40 Q. Why? A. For one thing I did not meet him. I could have spoken to him if I wanted to.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
—continued.

Q. You could have asked him why he brought your wife there that day? A. I preferred not to speak to him because it would have led to a scene.

Q. On Sunday you were not concerned about keeping up appearances you were quite prepared to take the consequences of your decision. That being your attitude why then did you not take him to task? A. Because despite my decision not to keep up appearances I did not want to create a scene.

Q. You might have taken him to a side and spoken to him? A. I did not want to. 10

Q. You are a moderate sort of person? A. At most times.

Q. 2nd defendant is of a similar temperament? A. I do not know.

Q. You had ample opportunity to judge? A. I had no occasion to notice him ruffled.

Q. You had no reason not to speak to him nicely, you could have told him, look here Sambo, why did you do this, I told you not to encourage my wife, why did you bring her here today? A. Because if I did so and she happened to know it the consequences would have been worse.

Q. You feared a row at home? A. No, I might have precipitated 20 a row there.

Q. Why did you not take him aside and ask him? A. I did not give it a thought because I did not want to do it.

Q. You behaved in that way because the 2nd defendant had come there with your wife at your request? A. No.

Q. That is the only explanation of that attitude? A. No.

Q. Even on the Sunday then your attitude was not to precipitate a row at the carnival itself? A. Yes.

I was at the carnival till about 11. Before I went I had dined. I did not dine at the carnival. 30

Q. Your wife had dined with you that night, it was a pleasant formal dinner? A. Yes.

Q. You said you were going to the carnival and she was quite happy about it? A. Yes.

When I came back my wife was not at home. She returned later I cannot remember the time.

Q. Did you go to bed? A. Yes.

(To Court :

I went to bed and closed the doors. I did not sit up for her.)

Q. It did not matter to you at what time she came or whether she 40 came? A. I expected her to come back at sometime.

(Question repeated). It did matter whether she came.

(To Court :

We were having twin beds but at this time she was not in the same room. She had shifted her quarters. She shifted after her sister left in August, 1941.

Q. Till then you were both occupying the same room? A. Yes. After that she shifted her bed to the middle room. That is room E.)

Till then we were occupying the front room D in twin beds. There is a communicating door between D and E. In Merita's room E while she was in occupation there was one bed. That bed had been removed after she left, she removed it. She had her own furniture in room E. She went at the end of August.

(Mr. Wickremanayake at this point draws my attention that A. B. Alles is in Court. Mr. Amerasekera says he is not being called.)

From D to E my wife took her dressing table and wardrobe and her bed. I was left in E with my own wardrobe, dressing table and bed.

(To Court :

Q. When you left on the 19th December was that room D empty? A. Except for the bed otherwise the room was empty. At Reid Avenue we occupied the same room and in the other houses).

20 Q. What was the necessity for changing? A. She said that the baby gets up early in the morning and comes into the room and that would disturb me and for that reason she took her bed to the middle room. The baby's room was the room K.

Q. That was a perfectly reasonable explanation and you approved of it? A. Yes.

Q. You do not yourself attach any point to that now? A. No.

Q. Your relations as man and wife continued? A. Yes.

Q. After you moved into room E you have lived as husband and wife? A. Yes.

30 Q. Then the position is that you returned from the carnival and went into the room D and retired for the night and the front door was closed? A. Yes.

Q. And you left it to her to find her way in? A. No, the woman was sleeping somewhere in the hall and she would open the door.

Q. She would knock at the door and the woman would open it? A. Yes.

Q. You cannot say when your wife returned? A. No. I did not hear her knocking at the door. But I remember her coming into the room. That woke me.

40 Q. Did you talk to her? A. Yes.

Q. Was there another row? A. Yes. I asked her why she had gone.

No. 30
 Defendant's
 Evidence
 Stanley
 Alles
 Cross-
 examination
 —continued.

Q. That is to say your objection was that she had gone to the carnival at all? A. And with the second defendant.

Q. You did not say why did you go with the second defendant? A. Yes. I did. Because I had previously told her she should not go with him.

Q. Your objections were two-fold because she went and because she went with the 2nd defendant? A. Yes.

(To Court :

Q. How did that row end? A. By her repeating what she said on the morning of the 6th.) 10

Q. What did you say, did you say she must do what you say? A. She kept on repeating and I kept on telling her that she should not go.

Q. It was then just an exchange of words she saying I will do this and that and go with whom she liked and your saying she should not do anything of the kind? A. I went further and said you are taking up very high ground with me and I may have to take some action.

Q. What is the action you contemplated? A. At that time I had not made up my mind. I had not made up my mind what to do at that stage.

Q. Why did you not then make up your mind to speak to the 2nd defendant? A. Because I realised it would be futile to speak to either of them. 20

Q. Why did you not tell him not to come to your house again? A. No, because at that stage I decided I would have taken independent action on my own.

Q. The only cause of displeasure between you and your wife then was her association with the 2nd defendant and her going out despite your telling her not to? A. Yes

Q. You are a peace-loving person and wanted to avoid rows and scenes of all kinds in public or private? A. Yes. 30

Q. Why did you not write to the 2nd defendant and say : Dear sir or dear Sambo, and so on, you must not come to my house again? A. Because if I had taken that step plaintiff was bound to have been aware of it and that would have made the scandal much worse.

Q. I am talking of the 7th, your evidence is you had made up your mind you would have to leave? A. I did not say I had decided to leave, I said I had threatened her with action. Between the 7th and the 14th I made up my mind to leave.

Q. On the 7th you had the second row and she proved defiant and certainly her conduct on that occasion left no room for you to suppose that she would mend her ways? A. She may have still decided to mend her ways after the 7th. 40

Q. Her attitude that morning left no room for that? I did not rule out that possibility.

Q. Were you still in love with your wife? Very fond of her. Your sole object was to prevent her doing something rash and certainly to keep her? A. Yes.

Q. Such as leave the house? A. She might have done something worse.

Q. What? Run away with the 2nd defendant? A. I did not think that but I always feared the scandal would get much worse.

Q. When you say that on the 7th morning having had this row you did not write or speak to the 2nd defendant because you did not want to precipitate any action by your wife, what was the action you thought she might take? A. She might have gone away for good for one thing.

Q. Next? A. She might have done anything. I concentrated on keeping her at home and not allowing any further scandal to be added to what was already there.

Q. One way of preventing the scandal was to see that she remained at home? A. That is what I was attempting to do.

Q. And also preventing her from going out with the 2nd defendant? A. I had also told her that.

Q. You had no reason to suppose they may visit without your knowledge? A. When?

Q. At that time? A. No reason to think that.

Q. In fact you have no evidence that they met outside your house at that time? A. He was coming to my house regularly. The one effective way of preventing this was to tell the 2nd defendant clear out of my house? A. Yes. But I have given my reasons why I did not take that step.

Q. Why? A. For one thing he had taken out the plaintiff despite my wishes expressed to the plaintiff and the other was I did not want to speak to him. I was naturally annoyed. I did not want to speak to him for fear of what the plaintiff would do.

Q. What the plaintiff would do was to have left your house altogether and you would not have minded it, you would have welcomed it? A. No.

Q. Between the 7th and the 14th you made up your mind to leave the plaintiff definitely? A. Yes.

Q. How near the 7th? Sometime in the course of the week? A. I cannot say what particular day of the week.

Q. Who helped you to make up your mind? A. Nobody.

Q. Did you discuss it with anybody? A. No.

Q. You revolved it in your mind? A. Yes.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
—continued.

Q. Did nothing happen after the 7th to help you to make up your mind? A. Yes, she persisted in going out. In the course of that week she was going out again. I do not know where she went, she went with the 2nd defendant and there were rows over it.

Q. After the 7th he came to the house and took her away? A. Yes.

Q. You were there? A. Yes.

Q. You looked elsewhere? A. No, I had told her not to go and she persisted in going and I found things had gone beyond my control.

Q. You went to the office room and pretended to look at a law book? 10
A. No.

Q. Or to write up your note book? A. You have often used it.

Q. At what time did he come and take your wife away? A. In the evenings, I do not know whether he came in the day time.

Q. At what time did he come? A. I cannot tell you the time.

Q. At what time did she return? A. For dinner.

Q. Did you appeal to the 2nd defendant on the ground of friendship?
A. At no time did I speak to the 2nd defendant on this question either by way of appeal or otherwise.

(To Court :

20

Between the 7th and the 19th plaintiff and 2nd defendant were going about together. They went out about twice or thrice during the whole period.)

Q. How many times did they go out between the 14th and the 19th?
A. I cannot split it up.

Q. When you came to this decision between the 7th and the 14th had you already spoken to your brother? A. I have already said I spoke to him for the first time on the 16th.

Q. When did you speak to Christy? A. On the 15th.

Q. At the time you spoke to him and wanted him to intervene with 30 your elder brother you had made up your mind to leave? A. Yes.

Q. Did you consider in your own mind whether you had sufficient cause for leaving? A. Yes I had.

Q. And had you then in your mind having left her you would bring an action for divorce? A. Yes. I had got to the stage when I felt I could not live with her any longer.

Q. Did you then in your own mind decide to seek a divorce before you saw Christie? A. At that stage I had decided to leave the house that is all I can say.

(Question repeated) I had not decided then to seek a divorce. I had 40 decided to leave the house.

Q. You had no other way you could justify your leaving the house?
A. Yes, I could justify it.

Q. You had considered that question? A. Yes.

Q. I suppose you read cases such as 26 N. L. R., 22 N. L. R. on the repudiation of the marriage tie? A. I had considered all questions.

Q. You read those cases again before you made up your mind? A. I knew them.

Q. Did you consult anybody? A. Nobody.

Q. Even as a friend? A. Not even as a friend.

Q. After you had seen your brother Christie had you then considered this question whether you should seek a divorce or separation? A. I was concerned with getting out of the house.

(To Court :

Q. When did you decide to seek a divorce? A. When I wrote that letter P2.

Q. Before summons in this action was served on you had you decided to sue? A. Yes. Summons was served on me on the 1st May.)

Q. Did you decide to sue before the 19th? A. I had intended to take legal advice.

Q. You had not taken it? A. I had only consulted Mr. H. A. Abeyewardene on the afternoon of the 19th.

20 Q. On the question whether you should seek a divorce or separation? A. No, I said this was the position and I wanted to leave the house.

Q. You left your wife on the 19th on that same afternoon you had the discussion with Abeyewardene. Can you tell me that decision you arrived at yourself after that discussion? A. I decided to leave the house.

Q. That was all? A. Yes.

Q. You did not then decide to seek a dissolution of marriage? A. I was considering that also because I put that down in my letter too.

30 Q. Do I understand you to say that at the point of time at which you went away from the house you had not made up your mind to bring the divorce case? A. I had.

Q. That was in consequence of your discussion with Mr. Abeyewardena? A. Yes.

Q. Why then did you allow your wife to serve summons on you first? A. Because I took legal advice after I left the house and I was told to await the birth of the child.

Q. On what ground did you then make up your mind to seek a dissolution of the marriage? A. Because by the 21st I was aware of 40 what had been happening in my house in my absence.

Q. I am still on the 19th, you said on the 19th before you left the house you made up your mind to seek a dissolution of marriage on what ground? A. On the ground I stated in my letter.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
—continued.

Q. What was that? A. The persistency with which she was going with the 2nd defendant, quarrels and hysterical outbursts.

(Counsel reads the letter.)

Q. I put it to you that at the time you had made up your mind to seek a separation? A. No I did not. Because the language you used living together was insupportable was rather a ground for separation?
A. No.

Q. At that time you definitely were charging your wife with continued intimacy with 2nd defendant? A. Yes.

Q. What did you mean by the word intimacy? A. Friendship, 10 going out. Because at that time I had no evidence at all.

Q. You were not charging her then with any sexual misconduct at that date? A. No.

After the 19th I did not meet the 2nd defendant at any time. I did not even run into him anywhere. I did not try to meet him.

Q. Why? A. I did not want to meet him.

Q. Why? A. Because by the 21st I was aware of what he had been doing.

Q. Between the 19th and 21st here was your great friend a man who had been very loyal to you up to that time. You had taken this extreme 20 step of leaving this house because of the suspicion and you had not spoken to him before because you thought your wife might do something desperate, but on the 19th you took a desperate step, why then on the 20th did you speak to him? A. I had taken the decisive action to break off all contact with all those people.

The Medical dance was on the 19th. I received an invitation for the dance from the 2nd defendant in November. I refused that invitation.

Q. What form did it take? A. He asked me whether I would be his guest at the dance.

Q. You and your wife? A. I was in the office room when he 30 asked me that.

Q. He came to your house, you were busy and he asked you would you and your wife come to the dance? A. He asked me only to be his guest at the dance.

Q. He omitted your wife? A. Yes. I take it he had invited her earlier. She was not with me in the room at the time.

Q. A person might ring you up and say will you and your wife have a little supper? A. I know but this is what he said.

Q. I put it to you that in November he asked you whether you and your wife would come? A. No. 40

Q. And he asked you how many tickets he may get for you? A. No.

Q. That was before Dr. Wickremasooriya had been called in? A. Yes.

Q. 2nd defendant was one of the conveners of the Medical dance?
 A. I do not know that. I am aware that he was, the previous year.

Q. He did not tell you on this occasion that he was one of the conveners of this year too?
 A. No.

Q. In point of fact your relations with him at that time were very good?
 A. Yes.

Q. Why did you refuse the invitation?
 A. Because I did not want to go to the dance.

Q. Why?
 A. Because I chose not to.

10 Q. You went to the previous Medical dance?
 A. Yes.

(To Court :

Q. Let us put ourselves into your frame of mind at the date of this invitation. On that date Dr. Wickremasooriya had not given you a jolt and everything was going on alright?
 A. Yes.

Q. You had no suspicions at that date of any improper relationship between your wife and 2nd defendant?
 A. No.

Q. He came into your office room and said, I say, will you be my guest at the Medical dance?
 A. I said no.

Q. Why?
 A. I did not feel like going for that dance.)

20 Q. What did you feel like, the Medical dance is probably one of the biggest dances of the year certainly among Ceylonese people and it is very near Christmas and people begin their Christmas festivities by going to that dance?
 A. I do not know.

Q. You had no objection of any kind?
 No I did not feel like accepting his invitation.

Q. You did not ask your wife what she felt. Did you tell her before Dr. Wickremasooriya had been called in the 2nd defendant has asked me for the dance?
 A. She was aware of it and she asked me why I refused.

30 Q. When was that?
 A. Almost immediately after. I said I did not feel like going and she did not say anything.

Q. 2nd defendant was a friend of yours and you did not want to be rude to him?
 A. No.

Q. You liked him to feel that you appreciated the invitation. Did you give him any reason?
 A. No.

Q. I put it to you when he said would you come to the dance as any decent person I suppose he meant that you and your wife should come?
 A. May be he did.

Q. The reason why you refused that invitation was because you could not take the Namasivayams along with you?
 A. That is utterly
 40 false.

Q. Did you at that point of time discuss with the Namasivayams the question of the Medical dance?
 A. No.

Q. Had Mrs. Namasivayam told you look here Stanley I love to go to that dance with you?
 A. She never told me that at any time.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
—continued.

Q. Does she dance? A. Yes.

Q. Did Mrs. Namasivayam at any time mention the Medical dance?

A. She never discussed anything with me about going to that dance, for any dance.

Q. You went with her to the Police dance? I went with her husband too.

Q. You went to the Silver Wings Carnival? A. Yes.

Q. Did you dance at the carnival? A. I think I did once with Miss Peter.

Q. Did Mr. Namasivayam dance? A. Yes. 10

Q. With Miss Peter? A. No, we had one dance and came away.

Q. With whom did he dance? A. With his wife.

Q. On the 19th December you were almost anxious that your wife should go to the dance? A. I was hoping to get an opportunity of leaving the house.

Q. If there was any indication of her not going you would have coerced her to? A. No. When she said she would not go unless I went I said that was a matter for her to decide.

Q. On the 19th you did not mind the risk of haemorrhage and so on? A. She gave me a reason, she said that her father was anxious that her 20 sister should go.

Q. That was an over-riding reason? A. Yes.

Q. That was the great opportunity for you to slink away? A. I do not say I slink away, I took the opportunity and went.

Q. Whether your wife got the haemorrhage or not you did not mind? At that stage, yes.

Q. The party that went from your house were? A. Noel de Costa, Miss Ludowyke and the two sisters, went together. I saw nothing improper in that.

Q. You had dinner together of course? A. Yes. 30

Q. 2nd defendant was at dinner? A. Yes.

Q. Pleasant party? Yes, no quarrelling.

Q. Your plans were all made? A. Yes.

Q. And you said not a word to anybody? A. Of course.

Q. You saw them off? A. I think I did, I was inside they said cheerio to me.

Q. Did you tell the 2nd defendant look after my wife? A. No.

Q. You did not tell her it is not good for her to dance too much? A. I said nothing to him.

Q. Did you go up to the door when they left? A. I do not 40 remember where I was.

Q. Did you come back to your office room? A. I cannot say.

- Q. This was towards the end of the term? A. Yes.
- Q. Dr. Reggie Alles is married? A. He has been married since 1935 I think. He has no children.
- Q. Is it assumed that he will not have children? A. I do not want to assume anything.
- Q. Your other brothers are unmarried? A. Yes.
- Q. You are now employed as Chief Press Officer? A. Yes.
- Q. What is your salary? A. Rs. 400 a month. I was appointed in July, 1942. I am in charge of the Scrutiny Section of the Investigation Department in regard to Censorship. I get no allowances.
- Q. Temporary office? A. Yes.
- Q. Non-pensionable? A. Yes.
- Q. It will come to an end with the war as usual? A. I suppose so.
- Q. You have admitted that about December, 1941, your condition was desperate, bad? A. Yes.
- Q. And you did not know which way to look? A. What do you mean? Did not know what to do to meet your obligations? I was not worried about the obligations at that stage.
- Q. You could not touch your father-in-law for any money? A. No.
- Q. At that stage any more? A. I had never done it.
- Q. You had done it in December? A. That was hardly touching him for money.
- Q. Would it be correct to say that the only people to whom you would go for assistance at that point of time were your people? A. That would be correct.
- Q. Would it be correct that so long as you remained married to your wife you would get no sympathy from that quarter? A. I do not agree with that at all.
- Q. The one person they objected to was your wife? A. They were quite alright with her at times.
- Q. Right along from the time you got engaged to her they objected to her? A. Yes.
- Q. At any time did they approve of her? A. After marriage relations were quite cordial at home.
- Q. They would not assist you. Your mother is a rich lady? A. Comfortably off.
- Q. She gave you no money for your marriage? A. No.
- Q. Previously she had been very lavish towards you, bought you a car and provided for you as a son of the family? A. Yes.
- Q. Is it correct to say that the first financial assistance you received after you married was when Reggie came to your assistance? A. Yes.

No. 30
 Defendant's
 Evidence
 Stanley
 Alles
 Cross-
 examination
 —continued.

(I point out to counsel that all this has been cross-examined on.)

Q. You referred to certain statements that you had taken when the servants came to you on 21-12 and on the 31st? A. Yes.

Q. Is it correct to say that you took no statements from any witness until after the child was born? A. When I answered that question yesterday I said specifically that I could not recollect when I had taken the statements.

Q. Will you deny that not a single statement was taken until after the child was born? A. I certainly will deny it.

Q. Is it your position and you will prove it I take it that you took 10 statements before that child was born? A. That is my recollection, between January and June I had certain statements.

Q. That does not answer my question, my question is between January and March did you take one single signed statement from any witness? A. I cannot give an answer to that off hand.

Q. The suggestion I make is this that you first began collecting evidence after this child was born and had proved to be a male child? A. I deny that.

Q. And you did that at the instance of your brother Reggie? A. Certainly not. 20

Q. Will you swear that before March you had taken one single statement? A. It is my impression that I had.

Q. Whose? A. I cannot say without reference now.

Q. Look at your papers and say? A. My papers are with my lawyers.

Q. Are you prepared to come down and look at the file of papers and say what is the first statement you took? A. I cannot say off hand.

Q. Not off hand I ask you to refer to your papers. A. All I can say is that from January onwards I was getting ready for this case. 30

Q. Are you prepared to examine the documents now in Court and tell the Court what is the first statement you took? A. I cannot say that.

Q. Are you prepared? When was the first statement taken? A. I cannot say.

Q. You have a file before you? A. That is my personal file.

Q. Who was the person taking the statements? A. My proctors.

Q. Were you present when they were taken? A. I was sometimes.

Q. Who was your proctor? A. Mr. Abeyewardene. 40

Q. Your driver fetched certain of these witnesses, did you then produce them to take down their statements? I think I did.

Q. Kindly look at that document and say? A. I cannot say off hand. I have not got any dates fixed because I did not keep a diary of what I was doing.

(To Court :

Q. In that file before you have you got any statements? A. They are my own notes. There are no statements of witnesses).

Q. In Court is there a file showing the statements recorded by you? A. I cannot say.

Q. Look at the papers and say. A. My proctor has everything.
10 Q. You can ask your proctor. Are you prepared to look at your papers? A. I said I do not know where they are.

(I ask Mr. Wickremanayake whether he has anything to say on this point. He says there are no statements of any witnesses here. His brief contains statements briefed to him that is all).

Q. Are there copies of statements with your proctor Mr. D. F. de Silva? A. I do not know.

Q. Are you prepared to look at his papers and answer that question? A. I do not know whether he has got them or not.

Q. Do you wish to verify from the documents in Court and tell us
20 what is the first date you took a statement? A. I would wish to do it but I cannot as the documents are not here and counsel has already stated there are no documents with him.

Q. You say that Mr. Abeyewardene has filed your proxy? A. Yes.

(To Court :

Q. Who is your proctor, whose proxy has been filed in this case? A. Mr. Abeyewardene's.

Q. Is Mr. D. F. de Silva a partner? A. They are not partners.

Q. Are you having two proctors? A. No.

30 Q. What is D. F. de Silva's status here? A. He has no status.

Q. Mr. Abeyewardene your proctor is not in Court at the present moment? A. No.)

Q. Do you deny that D. F. de Silva is paid a fee to be in Court and assist in the case? A. I am not aware. I have not paid him a fee.

Q. Mr. D. F. de Silva accompanied you to Bandarawela and took statements he would have them with him? A. I do not know.

Q. He had them at one time? A. Not to my knowledge.

Q. At no time? A. Yes.

Q. In the file have you any dates of events there? A. Nothing.
40 These are my own personal notes.

Q. Notes of what? A. With regard to this case.

Q. Including the statements of the witnesses? A. No.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
—continued.

Q. You verified just now from that file the date on which summons was served on you? A. Yes that was a minute I had kept.

Q. As a matter of fact it is your brother who is financing this litigation? A. My brother and my mother and myself. What little I can do I am also doing.

Q. When you were at Bandarawela you went to the house of the Outschoorns? A. Yes. That was on the 14th November I interviewed the Outschoorns and Solomons.

Q. Is it a fact you offered the Outschoorns an inducement to give evidence for you? A. I did nothing of the kind. 10

Q. If Outschoorn says that in the witness-box he is a deliberate liar? A. Yes.

(I ask Counsel what the inducement was. He says a money inducement.)

Q. Did you tell Outschoorn that you would make it worth his while if he gave evidence for you? A. I did nothing of the kind. If Outschoorn tells that it would be utterly false.

Q. You are not calling Mr. Outschoorn? A. He is on my list of witnesses and the calling of him is in the hands of my lawyers.

Q. So far as you are advised can you say? A. I have not been 20 advised on the calling of witnesses at all.

Q. You must have attended a conference? That is a matter for my counsel. Outschoorn is here and he has been drawing batta from me and he is on 2nd defendant's list and on plaintiff's list.

Q. Who is he? A. He is a gentleman who is running a boarding house at Bandarawela.

Q. What else is he? A. I know he is a boarding house-keeper.

Q. Witness Alice after she left your house was employed for some time under Waldo Sansoni? A. Till quite recently.

Q. She is now employed at Laurentum? A. No. 30

Q. She is now staying there? A. Yes.

Q. What is the reason? A. When she gives evidence she will give the reason why she is at Laurentum.

Q. You give the reason. A. She was found fault with for having come to Court on Thursday by her then employer.

Q. Who is that? A. Mr. Sansoni. Miss Sansoni found fault with her for having come to Court and she was told if she persisted in coming to Court she need not come back to the house and she left and came to Laurentum.

Q. She is not at Laurentum? A. She is staying there until this 40 case is over.

Q. Are you paying her? A. No.

Q. She is just living in comfort there? No answer.

(Shown P8). Q. You have for years been seeing various people in an endeavour to get a job? A. Yes.

(Shown P26). Q. You tell your wife in this letter that you did not receive anonymous letters? A. I have already explained yesterday that I was replying to a query of hers.

Q. Did you receive any anonymous letters? A. I said that I have not. At no time did I receive anonymous letters.

Q. You said yesterday that you had not arranged previously to spend your holiday at Colombo? A. I did not say that, I had written to plaintiff that I was coming down to Colombo and I would come to Bandarawela if I got a car.

Q. Apart from your paying a flying visit to her I put it to you it was your intention to spend that holiday in Colombo with the Namasivayams? A. No.

Q. Was it your intention to spend it in Colombo alone? A. Yes and if Mr. Weeresinghe was available to do a run up.

Q. And will be in Colombo for the holidays, that was your intention? A. Yes till Mr. Weeresinghe said he was coming down to Colombo himself.

Q. You were not prepared to go by train to Bandarawela? A. No.

(To Court :

Q. Why did you not go by train or car? A. I had no car and the plaintiff also wrote to me that there was no accommodation in the boarding house.

Q. You might have stayed elsewhere? I did not believe in staying elsewhere.

Q. The reason was that you had arranged to spend that holiday with the Namasivayams? A. Certainly not.

Q. You objected to stay in one boarding house while your wife was somewhere else? A. Yes.

Q. In Jaffna you were in the resthouse while your wife was at Krishnaratne's? A. Yes that was for three or four days.

Q. Then in Bandarawela? A. There was no accommodation in Bandarawela. Plaintiff wrote to me to that effect.

Q. That was at Solomon's? A. I was not going to stay elsewhere (Shown P13). "I am glad you had such a lovely time up in the hills. By all means go up again this week end", your wife wrote to say what a lovely time she had? A. Yes.

Q. And you were happy about it? A. Yes I was glad about it.

Q. You had an equally lovely time? A. No.

Q. You had been careering round Colombo, Batticaloa, Belihuloya Welimada? A. I had not gone to Welimada.

Q. You had a lovely time yourself? A. I had a good time.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
—continued.

Q. When you went to Solomons that Friday the ayah was there and so on with the child and you asked Mrs. Solomons whether she could find room for you? A. No because plaintiff had already written to me.

Q. Whether they could give you even a box room? A. No because plaintiff had already written to me.

(Shown P19). These letters were put to me yesterday and I admitted having written them.

Q. "Tell Sam not to worry. He can come to my house so long as I have no objection as often as he likes". A. Yes, because I had the most implicit faith in both. 10

Q. In point of fact at no time had you told 2nd defendant not to come to your house? No answer.

Q. Is it your case that 2nd defendant at no time wrote to you while you were in Jaffna? A. I said he wrote to me in July.

Q. That is the letter about your wife's illness? A. Yes. I am almost certain he did not write a single letter before.

Q. Your position is while you were in Jaffna the one letter he wrote to you was when he wrote about the wife's illness? A. I am almost certain.

Q. You did not write to him? A. I have said that I wrote to 20 him after July. I replied to the letter where he asked me to come down for the week end.

(Shown letter of 22-6, 2D3), (given by plaintiff's counsel). This was before my wife's illness.

Q. Did you say this "Please 'phone up Sam and ask him whether he has seen the car about which I wrote to him"? A. Yes.

Q. So it is a fact that you had written to him before? A. Yes I accept that.

Merlton belongs to my father-in-law.

Q. Was there a proposal at one time that your father-in-law should 30 convey that house to you? A. That was the suggestion when he bought it.

Q. Were the deeds actually handed to any particular lawyer for that purpose? A. Yes at the end of 1940.

Q. Promptly that arrangement was made you arranged to mortgage the house? A. The house was mortgaged.

Q. Did you arrange to raise Rs. 5,000 directly the proposed transfer was made? A. That transfer was to be made subject to the Rs. 25,000 mortgage already existing and I did not want to raise a further loan.

Q. When the deeds were handed to the proctors to draft the deed of 40 gift you then arranged to raise a further loan of Rs. 5,000 on the house? A. I do not think so.

Q. And the deed was not given because you proposed to mortgage it? A. No.

Q. Did you make arrangements with Wilson & Kadirgamer to raise a further loan? A. No.

Q. You deny you saw Sam Kadirgamer? A. I did see him certainly in that connection.

Q. When you saw him you asked him to see to raise a loan of Rs. 5,000? A. I deny that.

Q. That matter came to the notice of your father-in-law and he did not give you the house? A. No.

Q. The money was to be raised from Mr. Masilamony? A. No.

Q. The deed of gift was not given? A. No.

Q. It went to the stage of the deed of gift being prepared the deeds were handed to the proctor for the purpose but the matter was not completed? A. It was to be a deed of gift subject to a mortgage of Rs. 25,000. Mr. de Costa had taken that money.

(Question repeated). I do not know why the matter was withdrawn.

Q. It was withdrawn and you were very angry about it? A. No.

Q. Then you began calling your father-in-law "Old Boozer" and such affectionate terms? No answer.

I know Simion. He is de Costa's driver and henchman.

Q. "He is the old boozer's garbage collector"? A. He is that.

Q. What is the garbage? A. Various things. He did all his dirty work for him.

Q. He has not done dirty work for you? A. No.

Q. 2nd defendant is not a wealthy man? A. I do not know. I never discussed the question of his finances with him.

Q. He is not possessed of property? A. I do not know.

Q. Certainly you do not suggest that he used his money or threw his money about in an attempt to seduce your wife? A. I do not know how he achieved it.

(To Court :

Q. How did this happily married wife succumb to the lure of a man like this doctor, what were the arts he used? A. I do not know, that is a question that plaintiff can answer better).

Q. Certainly the doctor did not splash money about in an attempt to seduce your wife? A. I do not know what he did.

Q. He did not give your wife any expensive presents? A. No.

Q. He did not give her anything at all? A. He gave her a bottle of scent for her birthday worth Rs. 35. Plaintiff told me that.

Q. On that occasion what did you give her? A. I gave her a bottle of scent too.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
—continued.

- Q. How much did that cost? A. Rs. 15 or Rs. 20.
- Q. At least in that respect he out beat you? A. In other things also.
- Q. You had never seen him lavish with his money on those occasions at parties and so on, you spent equally? A. Yes.
- Q. Each paid for the drinks or bought the tickets and so on, there was no question of one sponging on the other? A. I do not think so.
- Q. You have by reason of what you alleged not lost any source of income? A. No.
- Q. The plaintiff did not earn any money at any time? A. No. 10
- Q. And it was not intended she should earn anything? A. No.
- Q. After your wife left you you engaged a house-keeper? A. No.
- Q. Or governess? A. No.
- Q. Your expenses have not increased by reason of you leaving your wife? A. No.
- Q. In point of fact they had gone down? A. Yes, I am not running a house.
- Q. And it is cheaper for you now? A. It is cheaper now but I have to pay her alimony.
- Q. How much? A. Rs. 85. 20
- Q. You do not suggest she could maintain the comforts you gave her on that? A. No.
- (To Court :
- Q. That sum was agreed on by agreement of parties.)
- Q. You will admit this that whatever confidence you may have had in your wife you were careless about her? A. I would not say that, I trusted her.
- Q. I put it to you you were also careless in the sense that you did not make any endeavour properly to inform yourself at any time when you could have prevented anything happening? A. I do not agree. 30
- Q. According to you rumours reached you? A. Yes much later.
- Q. In May there is some conversation your mother is supposed to have had? A. Yes.
- Q. You made no effort at all to verify it then? A. Because I had implicit faith in her.
- Q. That may be the reason but as a reasonable husband when rumours of that kind reached you you should have made inquiries? A. I do not agree.
- Q. And the elementary thing you should have done was to have satisfied yourself? A. I was in Jaffna. I came in August. 40
- Q. Gossip that had died down restarted after you went to Jaffna? A. I made no inquiries because I had implicit faith and trust in her.

Q. You encouraged her to go about now that you say there was misconduct will you agree that it would have been better if you did make some inquiries? A. I am only sorry that my trust was betrayed.

Q. Is there not another way of looking at it? A. That is the only way.

Q. The other way is if you had made some inquiries and come on some week end and asked some people you may have prevented the association which was then growing? A. No.

Q. And you might have prevented what you say has happened? A. I do not agree.

Q. In the circles in which you meet it is utterly unconventional, is it not for one of your ladies to go about with another married man unattended? A. But we were all friends.

Answer the question?

(To Court :

I am a Colombo Chetty. I have one sister she is married. Q. Before she married your mother and father would not allow her to go to a dance in the way you allowed your wife to go? A. No.

Q. Why? A. That is against the conventions.

Q. Now that she is married does her husband allow her to go about in the same way as your wife was allowed? A. No. For the same reason.

Q. Why did you not observe that convention? A. Because I was away in Jaffna and I did not want to feel I was cramping her and keeping her in the house because I knew she liked to enjoy herself.

Q. Is it usual for Colombo Chetty ladies to be thrown into the company of males? A. No.

Q. And a male with a wife and 7 children? A. No.

Q. Do you admit that you have done wrong? A. May be I was a little too credulous).

Q. I say you have been negligent? A. I would not take it as far as that.

Q. You will concede a husband has a certain duty towards his wife and one of them is to protect her from adventures of any kind?

(To Court :

Q. Counsel's point is that you as a reasonable husband were neglectful in relations with your wife? A. No because when I left Colombo she was a married woman, she had a child and she had a sister staying in the house, and I felt she had certain obligations to me and I did not feel that I should in any way restrict her activities but at the same time I never heard that she was misconducting herself).

Q. Before February she had been going about a good deal? A. Yes.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
—continued.

Q. You had no car then? A. No.

Q. That is one of the difficulties I suggest your wife had been used to a car and you were unable to give it and it was a convenient arrangement to allow the 2nd defendant to take her? A. No. He was a friend of the family and we treated him as that.

Q. You were unable to give her the use of a car? A. Yes.

Q. She could not go about by rickshaw, 'bus or tram, not accustomed to that sort of thing? A. Yes.

Q. Therefore it almost become necessary to provide a substitute by way of conveyance? A. No. 10

Q. And that substitute you arranged was 2nd defendant and his car? A. That was never in my mind.

Q. It came about that way? A. It happened that way.

Q. There was another reason for your neglect and that is then it enabled you to go your way with Mrs. Namasivayam? A. I went away to Jaffna.

Q. On occasions on which you were in Colombo you stated you had despatched these four people to Bandarawela and took Mrs. Namasivayam to dinner? A. I did not despatch them to Bandarawela.

Q. You connived at the arrangement? A. I did not. 20

Q. You approved of it? A. I did not, we were all friends and a party was arranged and they went.

Q. You raised no objection? A. I had no reason to.

Q. Then you approved of it? A. No.

Q. You approved of it because the 2nd defendant was leaving behind his car? A. Certainly not.

Q. That is how it worked out? A. It may have worked out like that.

Q. So far as you were concerned it was a very happy arrangement? A. I do not know whether happy or otherwise. Accident that is all. 30

Q. Do you say that by reason of what you say has happened you have lost in any particular way except of course the loss of honour and that sort of thing and loss of your wife's society? A. Certainly it has resulted in my being here.

Q. You claim Rs. 25,000, no doubt damages are given for loss of honour and the loss of the wife's society and general matters of that kind, you do not claim you have suffered any special loss? A. No.

Q. When your mother became aware of your wife's going about with 2nd defendant she thoroughly disapproved of it? A. She came and spoke to me about it. 40

Q. That is the way in which people in your status in life look upon it? A. Yes.

Q. She is a very respectable lady? A. Yes.

Q. And you belong to a respectable family yourself? A. Yes.

Q. And a wealthy family? A. Yes.

Q. When people asked you or spoke to you about this matter your reaction to it was to encourage them all the more? A. Not at all. I resented any suggestion against the plaintiff because I had such faith in her.

Q. You were informed that your wife was suffering from renal colic? A. Yes by your client.

Q. You knew that was a painful thing? A. I did not know what renal colic was. I knew it had something to do with the kidneys that is all.

Q. You had the choice of coming down and seeing her or attending the Governor's Cup? A. In the meantime I got a letter to say that she was better.

Q. You preferred to take your leave for the Governor's Cup rather than come and see her? A. No.

(Previous evidence put to witness) I said that, there was no urgency with regard to her illness and meanwhile she had written to me to say that she was much better.

20 Q. This was at the stage when you got 2nd defendant's letter before your wife wrote to you? A. But that letter was written later. (reads letter of 11-7). At that stage she was still ill with renal colic in the hands of Dr. Frank Gunasekere besides the Myleddy case started in May and went on to 20th August.

Q. Your reaction at that time was really as a loving husband you should come and see your wife? A. Yes.

(In relation to that letter the evidence given is put to the witness) I had already applied for leave to go to the Governor's Cup.

Q. At the point of time that you knew that your wife was very ill 30 between the Governor's Cup and seeing your wife, you chose to attend the Governor's Cup? A. No, I had applied for leave somewhere in July. In my letter to her I also explained why I could not come, because of that heavy case.

Q. At the time she was ill you had no reason to suspect her at all? A. No.

Q. You were still a loving husband? A. Yes.

Q. And so far as you were aware entirely loyal to you? A. Yes.

Q. Can you tell me how you estimate the Rs. 25,000, is it a shot in the dark? A. I feel as a result of his having committed adultery with 40 my wife I have the right to claim it from him.

(To Court :

Q. That is not what counsel means, why Rs. 25,000? A. I fixed it at Rs. 25,000.

No. 30
Defendant's
Evidence
Stanley
Alles
Cross-
examination
—continued.

Q. Why not Rs. 40,000? A. I thought Rs. 25,000 was a reasonable amount to ask).

Q. You thought that that amount of money compensation will make amends for the injury you say you have suffered? A. In some way.

Q. That is the price of your wife? A. No.

Q. You remember in your examination in chief you said that you had a gold wristlet watch, what you say is your wife told you that there was a new one at Hamer Bros. and she wanted to buy that and give this in exchange? A. Yes.

Q. You said it was unnecessary but however at a date when according to you there were continuous quarrels between the two of you and feelings strained she went to the extent of buying a new watch for you? A. Yes.

Q. That went to her father's account? A. I do not know.

Q. What happened to the old watch? A. That disappeared.

Q. You did not pay for the new watch? A. No. I was not submitted a bill.

Q. You do not know what happened to that old watch? A. No. Only what I have heard.

Q. You have no proof of what has happened to it? A. No. The new watch was in my wardrobe on the 19th.

Q. You do not propose to lead any evidence that the old watch was given to the 2nd defendant? A. I do not know I can only speak to what I have heard. I am not calling evidence to suggest it went to the 2nd defendant.

No. 30
Defendant's
Evidence
Stanley
Alles
Re-examination

REXD.

Q. You have been asked question with regard to mitigating damages, that you have been a negligent husband and with having thrown your wife into the company of this man? A. Yes.

Q. When you went to Jaffna was your wife left alone in your house? A. She was there with her sister and the child and her brother.

Q. Did you have any idea that your wife or that any decent woman would commit adultery in her own house with an unmarried sister there at the time? A. No.

Q. You were asked questions about conventions, so far as your wife was concerned what nationality is her mother? A. Burgher.

Q. And you told the court that your sister would not go out and dance unattended before or after marriage? A. Yes.

Q. Were the members of plaintiff's family more in the habit of going about more freely than was your sister? A. Yes. As a matter of fact my sister does not dance at all.

Q. You were asked about Alice you said you got a statement from her? A. Yes.

Q. Thereafter from the date you got the statement from her till you saw her in court on the first date of trial had you met or seen her? A. No. She was served with summons and she came to Court. That was on Thursday the 10th December. The names of all the witnesses who were in attendance were called and they were warned to attend. Alice was there. I next saw her the next morning. She turned up at home. She came and told me something.

No. 30
Defendant's
Evidence
Stanley
Alles
Re-exami-
nation
—continued

Q. What she told you was that she was given the choice of attending court or carrying on with her job? A. Yes.

10 Q. Do you know the relations between plaintiff's father and the Sansonis? A. Yes.

Q. What? A. Very friendly relations.

Q. You were asked with regard to the fact that it was a male child that influenced your brother to seek out evidence and help you in the financing of this case? A. Yes.

Q. That child was born on 26th March? A. Yes.

Q. By the 26th March how much of your debts had your brother already paid? A. About Rs. 3,000.

20 Q. If that child had been a girl she would have got nothing under the will? A. Yes.

Q. Up to that date where were you living? A. With my mother.

Q. And by that date had you begun to follow the trail of the evidence as you put it? A. Yes.

(To Court :

Q. At the date Joseph Richard was born had any statements been recorded from witnesses? A. I believe some were.)

30 Q. Now you were questioned about your financial position in 1941 the suggestion being made that your financial position was such that it drove you into the arms of your people who were prepared to help you only if you gave up your wife? A. Yes.

Q. You told us that there were times when relations were cordial between you and your mother and brothers even after you married? A. Yes.

Q. As a matter of fact you point to the document produced that your mother had been to see Mr. Jayetilleke (I point out to Counsel that this is all comment.).

Q. Will you tell me what your relationship with Mr. Jayetilleke was? A. His wife and mine are first cousins. My mother is his wife's sister.

40 No. Q. In spite of your mother's interview did you get the job? A.

Q. There is a reference in the letters to an attempt to meet O. E. G. also? A. Yes.

No. 30
Defendant's
Evidence
Stanley
Alles
Re-exami-
nation
—continued.

Q. And you were hopeful of confirmation in regard to another post which you refer to in P20? A. Yes.

Q. The suggestion was made that you were in financial difficulties? A. Yes.

Q. And therefore abandoned your wife? A. Yes.

Q. When did you first get into financial difficulties? A. 1938, 1939. In 1939 I was indebted to the extent of about Rs. 5,000.

Q. At the time your mother spoke to you in May, 1941, what was the state of your finances? A. About Rs. 7,000 or Rs. 8,000.

Q. And you took your wife's side against your mother? A. Yes, 10 all along.

Q. Which resulted in strained relations? A. Yes.

Q. You were entitled to certain *fidei commissary* interest in a property in the Fort? A. Yes, Britannia Buildings.

Q. That was the subject-matter of a partition action and the property was sold for several lacs and the money was in Court subject to the *fidei commissum*.

Q. One set of ultimate fiduciaries were you and your brothers and sisters? A. Yes.

Q. In 1939 you were indebted and in spite of that what did you do 20 with regard to your share of that money? A. I signed away my share in the *fidei commissary* estate to my sister to have a house built for her. I produce the agreement 1D6 whereby I parted with my *fidei commissary* interests in a 1/6th of 27,125 rupees.

Q. You were asked questions about the row in November. You said you did not use any foul language? A. Yes. I upbraided my wife.

Q. Prior to that had there been any such rows of that nature? A. No that was the first of its kind.

Q. The further suggestion was made to you that you gave your wife 30 these opportunities to go with the 2nd defendant in order that you might have your own way with Mrs. Namasivayam? A. Yes.

Q. Is there any truth in the suggestion that you have at any time misconducted with Mrs. Namasivayam? A. No.

Q. Were you in love with her or was there any undue familiarity? A. No.

Q. The first time that suggestion was made to you was in Court here? A. Yes.

Q. As a matter of fact have you ever been out with her without her husband being present except on the night of the 18th? A. No. I 40 always went out with Mr. and Mrs.

Q. And was your wife also very friendly with them? A. Yes.

Q. With regard to the going out on the 18th. On the 18th your wife had left with that party including Mr. Namasivayam and the 2nd defendant? A. Yes.

Q. When your wife came on the previous day she had brought the baby down? A. Yes.

Q. Where was the baby's ayah? A. At Bandarawela.

Q. What did she do with the child before she went back to Bandarawela? A. She sent the child to Mrs. Namasivayam's house. I was not at home when the child was sent. I was in the office.

10 Q. You were aware that she was going to send the child there? A. I was aware, she had told me so.

The pictures and the dinner was arranged on the 17th. Mr. Namasivayam suggested that when I went round to see the child that I should take them out. I have given a reason why Mrs. Namasivayam did not go to Bandarawela.

(To Court :

Q. Are the Namasivayams, people to whom you can offer any money for looking after the child? A. No.

20 Q. Why did you take Mrs. Namasivayam out to dinner and the pictures? A. We were friends and on the 18th because she was alone in Colombo Mr. Namasivayam had told me if I was free that I should take her out.

Q. And she was looking after your child? A. Yes.

Q. Did you go out with her for any sexual purpose? A. No.)

Montague Jayawickreme turned up to the birthday party on the 17th. He is married. He was in Colombo at the time. He is mobilized attached to the C. L. I. His wife was up at Bandarawela in his grandfather's house. That is not a boarding house. His wife's brother-in-law and Montague Jayawickreme's brother were staying in that house.

80 (To Court :

I was in Jaffna from the 1st February to 8th April.

Q. During that period your wife came to Jaffna between the 27-2 and 4-3? A. Yes.

Q. Did you have sexual relations then? A. No.

Q. Your wife went off to Bandarawela on 22-3? A. Yes.

Q. She was there till 17-4 when she came to Colombo for the birthday? A. Yes.

Q. Except for the few minutes of conversation in Bandarawela you had no contact with her during that period? A. No.

40 Q. No intercourse? A. No.

Q. Then you were both in Colombo together between the 17th and 18th April? A. Yes.

No. 30
Defendant's
Evidence
Stanley
Alles
Re-exami-
nation
—continued.

Q. Stayed in the same house? A. Yes.

Q. Did you have intercourse? A. We may have had possibly we did.

Q. After that from the 19-4 till 8-8 you were at Jaffna? A. Yes.

Q. Did you have any intercourse with your wife between those two dates? A. None at all.

Q. You came down for the Governor's Cup and you were in Colombo on the 19th August? A. Yes.

Q. You and your wife slept together under the same roof that night? A. Yes. 10

Q. Did you have intercourse then? A. No, I was very tired and had a severe headache and I went to bed without dinner.

(Mr. Ameresekere and Mr. Obeyesekere object. As the question is objected to I do not press it.)

Q. You are alleging adultery between these two people at Colombo between 15-2 and 20-3. Can you tell me who were the inmates of that house at that period? A. Merita, her brother Noel up to the beginning of March, plaintiff, the baby and staff.

Q. I want the names of the staff? A. I cannot give the names. Alice was there, the cookwoman and there was another Valauthen not the 20 witness. There were three female servants. Jane was not there. Sophia was not there. The two boys who were there are not witnesses in this case.

Q. Then comes the Bandarawela period and then the second adulterous period from 20-4 to 20-8, is it right that at that time there were Merita, Philip, Velauthen, Pabilis, Alice, Jane, Joslin and Sophia? A. With regard to Joslin and Sophia they were both baby's ayahs and when Josline left Sophia came.

Sgd. R. F. DIAS,
D. J.

No. 30
Defendant's
Evidence
(Medical
Evidence)

Before the Medical Evidence is called Mr. Amerasekera says he does 30 not know what the medical evidence is going to prove. He submits there is proof before the court that there was access between husband and wife at certain periods. He says the date of the child's birth is fixed. He says the evidence will lead the court easily to infer that the husband, the 1st defendant had access to the plaintiff at a period when the child would have been begotten.

I ask counsel when the child could have been begotten? He says at any period prior to the 280 days.

I ask counsel what his application is? He says he wants Mr. Wickremanayake to say what the purpose of his evidence is. He submits if 40 the purpose is only to show that it is probable or it is likely that some one else could have been the father such evidence will not be admissible because the husband had access to the wife at that period.

Mr. Obeyesekera says he has nothing to say.

Mr. Wickremanayake says he is leading evidence relevant to the issues. He submits he has led certain evidence regarding non access and he will now lead medical evidence regarding the impossibility of the child have been begotten at a time when his client had access.

No. 30
Defendant's
Evidence
(Medical
Evidence)
—continued.

Mr. Ameresekera wants to know whether it is impossible for the child to have been begotten at the time that the husband had access to the wife.

Mr. Wickremanayake says he is not going to explain anything more.

I think the best thing to do is to ascertain this question of access at this stage.

Mr. Amerasekera argues the birth of the child is dated 26-3-42. He says that by counting back from that date to the admitted dates of access we find the period during which time the child could have been begotten and then he submits it is not open to the 1st defendant to adduce any evidence that it is not his child. From 26-3-42 back to the 9th August he says is a period of 229 days. He cites Amir Ali 8th Ed. 65. He argues that if A had intercourse with a married woman on 11-6 and the husband had intercourse with the wife on 9-8 and the child was born on 26-3 the husband cannot lead evidence to prove A had intercourse with his wife on 11-6. He argues the 1st defendant having admitted that he and his wife having slept under the same roof on 9-8 it is not open to the 1st defendant to say that the child was begotten by some one else on 11-6.

Cites 1932 All India Reporter Madras 39 at 40.

He argues that the 5 Judges' decision of the Supreme Court in 25 New Law Reports 241 has been over-ruled by the Privy Council in 1934 All India Reporter—Privy Council 49. He cites 1924 Madras All India Reports 677, Mr. Obeyesekere says he is only interested in the question of damages.

Mr. Wickremanayake submits the point of time at which he has to prove non access is not when a viable child could have been begotten but when the child in question was begotten. Submits the court is not concerned with abstract questions. The point is the period of gestation and whether that child could have been begotten. He seeks to lead the evidence to fix the point of time when that child could have been begotten. It is necessary and relevant to ascertain the date of conception of the child.

Order

It is expedient that I should say as little as possible while the main issues in this case are still undecided. The only question I am now deciding is the admissibility of the Medical Evidence and to set a limit to the questions which can be asked of the doctors.

Admittedly the child Joseph Richard was born to the plaintiff on 26-3-42. One of the issues in the case, although it may not be conclusive as against the child itself, is whether the 1st defendant is the father of

No. 30
Defendant's
Evidence
(Medical
Evidence)
—continued.

that child. The relevancy of that evidence in this case is on the question of matrimonial misconduct. Any decision this Court comes to on that question will not be binding on the child. It is admitted that section 112 of the Evidence Ordinance governs this case. That section lays down a presumption *juris et de jure* and creates an exception to it. We start in this case with the presumption that Joseph Richard is legitimate, he having been born during the continuance of a valid marriage, between the 1st defendant and the plaintiff. The only way in which the 1st defendant seeks to avoid that presumption is by proving that the 1st defendant had no access to the plaintiff at any time when such child could have been 10 begotten. I hold that word "begotten" means "conceived." There is apparently a divergence of Judicial opinion as to the meaning of the word "access." We have the decision of the Ceylon Full Court in 25 N.L.R. 241 where the word access has been defined by five judges of the Supreme Court to mean actual sexual intercourse. It is said that the decision of the Privy Council in 1934 A. I. R. P. C. p. 49 over-ruled the Ceylon Full Court. That is a question on which I will hear argument at the close of the case and it is unnecessary at this stage to express any opinion on that point. But granting that there was "access," that is not enough. The access must be access at a time when Joseph Richard could have been 20 begotten or conceived. That is a mixed question of law, medical jurisprudence and fact. As I understand learned counsel's argument, assuming that "A" a married woman had adulterous intercourse with a man "B" by whom she conceived, and thereafter the husband had intercourse with "A" at any time when a viable child may have been born to her, that fact creates an irrebuttable presumption that the child born to "A" is legitimate. I do not agree with that proposition in its entirety. I hold that it will be open to either side, either in proving the illegitimacy of Joseph Richard or in supporting his legitimacy, to lead evidence (a) that the 1st defendant had access in its legal sense to the plaintiff and (b) that such 30 access was at a time as when Joseph Richard could have been conceived. I fail to see how these facts can be established without leading medical evidence, and I hold that medical evidence is admissible for the proof of those facts and for nothing else. What the effect of that evidence is we shall consider when the case is finished. I do not think I am called upon to say anything more at this stage.

(Sgd.) R. F. DIAS,
D. J.

Further hearing on Monday.

21-12-42.

40

Junior counsel for the plaintiff says that his senior is down with phlebitis. He says he has not got the books. I adjourn the case for half an hour till junior counsel gets into touch with senior counsel.

Mr. Wickremanayake now appears.

Counsel as before.

DR. G. A. WICKREMASOORIYA—Sworn.

No. 30
Defendant's
Evidence
Dr. Wickre-
masooriya
Examination

I am an F. R. C. P. (Edin.) and F. R. C. S. (Edin.) and F. R. O. G. (London).

Q. You are also I believe a winner of the Catherine Bishop Carmen prize? *A.* Yes.

That is for research work directed to the diminution and avoidance of maternal mortality. The prize is open to competition throughout the whole British Empire. I am a visiting obstetrician of the De Soysa Lying-in-home. I have made a special study of obstetrics and gynæcology.

10 *I* attended on Mrs. Alles at both her confinements. The child Joseph Richard was delivered by me on the 26th March, 1942. It appeared to be a mature child. By that I mean of complete uterine development. It looked an average full term child.

The normal period of gestation is about 280 days, that is the menstrual labour period? That is the period that elapsed from the beginning of the last menstrual period to the time of delivery. It is spoken of as menstruation delivery interval. The insemination delivery period is slightly shorter and it varies from 265 to 270 days, and there are variations in that also.

20 *Q.* Within that period would be the insemination delivery period? *A.* Yes, but there are individual variations.

Q. Nobody can exactly say when the insemination takes place? *A.* Yes.

Q. Insemination means the day on which the ovum is fertilized? *A.* Yes, but it may not necessarily correspond with the day on which coitus takes place. It is very near the time of conception but not exactly on the day of coitus.

(To Court :

30 *Q.* Can a human being have two days of conception? *A.* No. A person can conceive only once and that is when the spermatogoa fertilizes the female ovum.

Q. Then what about twins? *A.* Twins may develop by same ova dividing into two. When one ovum is fertilized and it divides into two or it may be two ova are fertilized at one and the same time it may result in twins.

Q. Then with regard to one individual the conception can only be on one day and at one time? *A.* Yes but there are various exceptions.)

40 *Q.* Do you agree that the maximum uterine development is during the last two months or 8 weeks of gestation? *A.* Not necessarily, the develops rapidly even in the earlier period but there is a marked increase in the last month. The growth of the nails and things like that are marked during the last 8 weeks of gestation.

No. 30
Defendant's
Evidence
Dr. Wickre-
masooriya
Examination
—continued.

(Shown passage in Taylor—1934 Ed. Vol. 2 page 47).

Q. Do you agree with this passage? A. I agree.

It is not possible for a doctor to say whether a child has had a gestation period of 38 weeks or 40 weeks, one cannot be accurate.

Q. The shorter the period of uterine life the more marked will be the signs of prematurity? A. Yes.

Q. If a child has had a uterine life of only 36 weeks there will normally be evidence of prematurity? A. Yes.

Q. If the uterine life has been 34 weeks there will be a greater degree of prematurity evident? A. Yes. 10

Q. Would it be correct to say that after the uterine life of 34 weeks signs of prematurity would be evident in the last week within the 34 weeks? A. Yes.

Q. Noticeable to a doctor? A. Yes.

(To Court :

Q. Cannot a doctor say whether a child is a 7 months child, an 8 months or 9 months child? A. Yes roughly.

Whether it is 8 months or 9 months it is difficult to say, but a 7 months child you can say.

Q. Without any mistake? A. Yes. 20

Q. This child that was delivered by you what was its weight? A. So far as I recollect 6½ lbs.

Q. Is that unusual? A. That is the normal weight. Anything between 6 and 8 I would consider normal.

(To Court :

Q. Do you remember the weight of the first child? A. I am not certain. I think it was somewhere between 6 and 7, nearer 7, but I can verify that).

Q. This child you told us appeared to be a mature child? A. Yes there were no signs of prematurity. For all practical purposes I would say it was a fully developed child.

Q. That is a 9 months child? A. A full term child.

Q. A premature child, that is a 7 months child is difficult to bring up and would need special care? A. Yes.

Q. What are the chances of life of a 7 months child? A. That depends on the degree of attention the child receives.

Q. The chances of survival are less in the case of a 7 months child than in an 8 or 9 months child? A. Absolutely.

Q. The child would have to be kept warm, and have oil baths and would not be suckled but fed? A. Yes. 40

Q. And the doctor would necessarily give the necessary instructions to the nurse? A. Yes.

Q. Here no such instructions were necessary? A. No, the child needed no special attention, it appeared to be a child with normal vitality.

(To Court :

Q. Were there any other doctors associated with you in this delivery?
A. No, at the time of the confinement I was the only doctor but she had been seen just before by Dr. Fernando at Kandana. He telephoned to me to say that Mrs. Alles had suddenly ruptured a membrane and I was consulted as to whether she should come to Colombo.

Q. Labour started at Kandana? A. The membrane was ruptured at Kandana and she was brought to Colombo.

(To Court :

Q. That was a normal labour? A. Yes.

Q. It was not a forced one, it was a natural birth? A. Yes.

Q. No instruments had to be used? A. No.)

Q. You were in attendance on the lady at the first confinement also?
A. Yes.

Q. You remember being called in some day in November? Do you remember examining this patient somewhere about November 1941?

A. She consulted me for the first time during this pregnancy on 23-10-41.

20 Q. Where was that? A. She consulted me in my house.

Q. I think she came with another person an aunt of hers. Not with Mr. Alles? A. No.

Q. Then you saw her in her own house? A. I received a telephone message from the house and I visited her. I cannot fix that date. It was between that date and the 17th December.

Q. That is between 23-10 and 17-12? A. Yes.

Q. Was Mr. Alles in the house? A. Yes, he was there and I spoke to him.

Q. He has said it was in the latter half of November, a Saturday 30 a race day? A. It is possible I am not sure.

Q. You examined her on the 23rd October? A. Yes.

Q. On that day in November did you examine her? A. Yes, but I have no record of that.

I saw her in the room.

Q. When you came out of the room did you have any conversation thereafter? A. Yes to both of them together.

Q. She was in the room when you saw her? A. Yes.

Q. And when you came out Mr. Alles was in the verandah, did you say anything to him? A. Yes.

40 Q. Can you remember what you told him. No answer.

Q. Did you speak to the 1st defendant in the presence of the plaintiff? A. Yes I had a long conversation for about half an hour.

No. 30
Defendant's
Evidence
Dr. Wickre-
masooriya
Examination
—continued.

Q. Did you speak to the 1st defendant in the verandah with his wife? A. She was not there.

Q. What did you tell him? A. I said that she is expecting and she needs careful treatment.

Q. Did you say anything more? A. Nothing.

Q. Did you say anything about the gestation? A. I cannot remember. But I remember I diagnosed pregnancy and I prescribed some medicines and gave some instructions as to treatment.

Q. If the husband says you spoke to him about the period of gestation? A. I do not think that is right. I do not think I men-10 tioned to him the gestation period.

Q. If he swears that you told him that his wife was carrying a certain term child at that time are you prepared to contradict that? A. I may have said I cannot remember.

Q. Can you say how long that child had been in the mother's womb at that time? A. As I have no record I cannot say that, but on the 23rd October I have made some notes, she was pregnant and her uterus was enlarged to about four fingers breadth above the junction of the pubic bone.

Q. What inference can you draw from that? A. On the 23rd of 20 October I considered she was within 14 and 16 weeks of gestation calculating from the last menstrual period—an average of 15 weeks.

Q. How did you know the last menstrual period? A. I have some notes here.

Q. Who gave you that information? A. Mrs. Alles.

On the first occasion she was not sure of the day and she was not able to tell me, on the second occasion when she came on 17-12-41, that was the second visit to my bungalow. But I had been to the house in between. On the 17th December I heard the foetal heart sound.

Q. Anything more? A. I do not know whether I am right in 30 mentioning the period she gave me certain dates.

Q. On that date could you form any opinion of the gestation? A. Roughly. I had two data on which to come to the conclusion as to the time of maturity, one was the enlargement of the uterus to about four fingers and the second was on 17-12 I heard the foetal heart sounds the foetal heart sounds are normally heard about the 20th week but occasionally it may be heard a little earlier, but generally speaking it is about that time.

Q. That would not necessarily be the 20th week of pregnancy. Combining the 23-10 and 17-12 can you form a rough estimate of the date 40 of pregnancy? A. The first date would suggest to me 15 weeks of gestation, that is on 23rd October. On the 23rd October it would have been roughly 14 to 16 weeks, or an average of 15 weeks. From 23-10 to

16-12 is 8 weeks and those 8 weeks are added to the original 15 and it comes to about 23 weeks. On the day I heard the foetal heart sounds I would admit that the period of pregnancy to be about 23 weeks.

No. 30
Defendant's
Evidence
Dr. Wickre-
masooriya
Examination
—continued.

Q. Mr. Alles says that on the day in November that you went to the bungalow you told him something about the pregnancy can you deny that? A. It may be so but I am certain I said she was pregnant. At that time I was not concerned with the period.

(To Court :

Q. If he swears that on that day in November you told him that his 10 wife was in the 5th month would that be right? A. If I am given the date in November I can say.

Q. It was a race day and a Saturday? A. No answer.)

Q. Can you say how many weeks it would be on the 15th and how many on the 22nd and how many on the 29th. Knowing what you knew? On the 23-10 it would have been 15 weeks, and there will be 8 days in October and 15 days in November? A. Yes 23 days, that would be three weeks.

Q. Then knowing what you knew on the 23rd October what was the period of gestation on 15th, 22nd and 29th? A. On 15th November 20 it would be about 18 weeks.

Q. That would be in the 5th month? A. Yes, in the 5th month. On the 22nd would be another week more. It would be the 19th week and that would be in the 5th month. The 29th also would be in the 5th month.

Q. On the first occasion she came to see you she could not give the last menstrual period? A. I have a query there in my notes because she was rather confused about it. The first thing I would ask would be that and I have asked her and she was not able to give the date.

Q. In December she gave the dates? A. Yes.

80 (To Court :

Q. If the 1st defendant says that on that day when you visited him at the bungalow and you told him she was in the 5th month from your calculations would that be right? A. Yes.

Q. But you say you have no recollection? A. No.)

Q. You attended on her first confinement would know that her menstrual periods come on regularly once in 28 days? A. I cannot remember.

(To Court :

Q. You know the date of the birth of the child and you had made 40 three examinations can you tell us when such person could have been begotten? A. According to the ordinary way of reckoning the dates can vary.

No. 30
Defendant's
Evidence
Dr. Wickre-
masooriya
Examination
—continued.

Q. Leaving out the variations, take all the dates into consideration, what she told you and what you have observed? A. From all the data I have arrived at the conclusion that the period of gestation from the commencement would be 37 weeks.

Q. I want the date? A. I calculated from the date given by her and the 18th April, 1942 is the expected date of confinement I want the date of conception? A. After July 11th, any possible date.

Q. Why do you say July 11th? A. That is one of the possible dates. 11th July to the 14th July was the period and she must have conceived after that. I have arrived at those dates on her own menstrual history.

Q. I want you to take all the facts and all the data and working backwards from 26-3 give me the date of conception? A. You can give another possible date 19th June. But there is a possible error of two to three weeks in that date.

Q. You would take it back to July? A. Yes it might.

Q. Let us check it by another way now. On 23-10 you said it might be 14 to 16 weeks, average 15 weeks, now work backwards from the 23rd October when will the date of conception come? A. 15 weeks back.

Q. That would be when? A. July 10th, but I would like to verify that again. (The witness is calculating in Court. Counsel on both sides say that that date is correct).

Q. Supposing on the 17th December Mr. Alles wanted to know when this ovum became impregnated and you have said it was 23 weeks? A. Roughly.

Q. Just work back and say whether you can get anywhere about the same dates? A. (Mr. Wickremanayake says it will be July 9th). It is difficult to say when the ovum became fertilized. If we go back from 17th December 22 weeks we come to the 9th July. You can make a rough calculation if the menstrual history is known and if it is one coitus.

Q. Then you can arrive at a rough approximate date within an error of how much, one week? A. You can get a more approximate date and there would be an error of a few days).

Q. In your calculations you are giving the court you were aware of the date of the last menstrual period? A. Yes. And also after my examination.

Q. That menstrual period was mentioned to you by the lady herself? A. Yes, and that was only in December.

Q. It was not mentioned to you in October? A. No.

Q. You told us the child was a mature child? A. Yes, for all practical purposes.

Q. That would be a gestation period of 37 weeks? A. Really the gestation period would be a little less. I would say roughly 37 weeks.

Q. In the case of a child when you talk of a full term child you are talking from what point of view? A. Menstrual period.

Q. When was this child conceived? A. Somewhere round about the first two weeks in July.

Q. Can you say that definitely? A. The ordinary way of reckoning I calculate it to be the 18th of July roughly when conception might have taken place.

No. 30
Defendant's
Evidence
Dr. Wickre-
masooriya
Examination
—continued.

XXD by MR. AMERASEKERA.

10 A. Q. You have been treating Mrs. Alles for her last confinement? A. Yes.

Q. When did you first treat her? A. I think even before her first confinement.

Q. That is prior to 1938? A. Yes.

Q. As a matter of fact she did not conceive for a long time after marriage? A. Yes and she was taking treatment.

Q. For what condition did you treat her? A. I think for sterility resulting from a retroverted uterus.

Q. When was that? A. I cannot give the date.

20 Q. What was her menstrual history at that time? A. I cannot remember. I think it was just the normal thing, I was not interested and I cannot answer that question. I would not commit myself by any statement with regard to her menstrual history at that time.

Q. Well, for this condition you advised an operation? A. Yes. The examination was under an anæsthetic.

Q. There was an examination, and was there an operation too? A. Yes it was not scraped, I suspected there to be a block in the fellopian tubes and I dilated the cervix and insafflated the tubes to enable the ovum to come into the womb.

Q. This operation was at Dr. C. I. de Silva's bungalow? A. Yes.

80 Q. But he did not assist in the operation? A. No, I did the operation.

Q. This condition was apparently connected with irregular periods? A. Not necessarily, it may be.

Q. After that was done everything was alright? A. It had to be repeated a second time.

Q. Even after that you continued to treat her and there was a second operation? A. No, it was not an operation, it was an insafflation of the fellopian tubes. It was not under an anæsthetic.

40 Q. Six nurses had to hold her down? A. She was very nervous and excited. I knew that no anæsthetic was necessary on that occasion.

No. 30
Defendant's
Evidence
Dr. Wickre-
masooriya
Cross-
examination.

No. 80
Defendant's
Evidence
Dr. Wickre-
masooriya
Cross-
examination
—continued.

Q. No anæsthetic was administered on that occasion but you did the necessary adjustment? A. I thought I did.

Q. It was after that that she conceived her first baby? A. Yes.

Q. You attended on her on that occasion? A. Yes.

Q. So what was wrong had been set right? A. Apparently because she conceived.

Q. On the second occasion when the child was born you say she came to you for the first time about 23rd October? A. Yes. On that occasion I did not make a vaginal examination, there was no necessity for that. 10

Q. And you came to the conclusion that she was about 14 to 16 weeks? A. Yes average of 15.

Q. You say that on that day you got no information from the patient in regard to her last menstrual period? A. No I questioned her but she was rather ill at the time, and she looked emaciated.

Q. What was that illness about? A. She said she was having some urine trouble.

Q. Was it stone? A. She said something about a renal colic. She mentioned renal colic, and she mentioned Dr. Frank Gunasekere's name. 20

Q. Then the next occasion you saw her was at her bungalow some-time in November? A. Yes.

Q. You cannot place the exact date? A. No.

Q. On that occasion I understand you gave her a prescription and it has been dispensed—Shown P23? A. Yes.

Q. Did you advise her to get it immediately dispensed? A. Yes. I cannot fix the date I gave that prescription.

Q. What was that for? A. It was a uterine sedative to prevent a miscarriage or abortion. There was no threat of miscarriage but as she was run down in health and had some discomfort in the abdomen I thought 30 it was a necessary precaution.

Q. You gave that in view of her previous history also? A. I think I prescribed that in view of the symptoms she had at the time.

Q. You said you had a discussion with the wife and husband? A. No, there was no discussion, I knew both of them and we had an ordinary talk. The talk was not on this subject. After I finished my professional work we had a chat about things in general. I am perfectly sure of that, it was not over this.

Q. Of course the husband knew that the wife was pregnant at that time? A. I told him so. 40

Q. Was there anything to indicate that that was the first intimation he had?

(Mr. Wickremanayake objects).

(To Court :

Q. Her abdomen was not noticeable? A. No, unless by examination it could not be found).

Q. Subsequently you saw her again on 17-12? A. Yes.

Q. And you regularly saw her once every month? A. I believe so, because it should be done.

(To Court :

Q. Why take that precaution against a possible abortion, did you know she was fond of dancing? A. Not at that time subsequently I
10 heard about it.

Q. No question of going to a dance mentioned? A. No.)

Q. Subsequent to that did you see her regularly every month?
A. I saw her after 17-12 on 13-1 and again on 11-2.

Q. Why? A. They usually come once a month or so to see whether they are quite well.

(To Court :

Q. There was nothing wrong, no condition needing attention? A.
But she was rather down and she paid these visits on her own).

Q. On any of those visits did you tell her when she is likely to be
20 brought to bed? A. Yes I had mentioned April 18th. I think I told her that on 17th December.

(To Court :

I told her that April 18 was probably the date of delivery).

Q. And you asked her as to whether the confinement was going to take place in the house or in a nursing home? A. I think she told me she was going to a nursing home in Colombo.

Q. At that date the husband and wife were living together? A.
Yes.

Q. And arrangements were made at St. Mary's Nursing home?
30 A. Those arrangements must have been made by her.

Q. Did you yourself speak to Mrs. Sirimane? A. No, those are done by the patient.

Q. And that date 18th April was given on the footing of her last menstrual period being in July? A. Yes.

Q. What date? A. 11th to 14th. The menstrual date was given to me by her and I calculated.

Q. That calculation agreed with the inference you had made on your examination? A. Yes.

Q. You know that this child was born on the 26th of March? A.
40 Yes.

No. 30
Defendant's
Evidence
Dr. Wickre-
masooriya
Cross-
examination
—continued.

Q. That date is consistent with the fact that she had her last menstrual period between 11th and 14th? A. I think it is consistent, but I must verify that answer because when we calculate a date like that we always tell the patient there is the possibility of an error of about two weeks and exceptionally three weeks.

Q. That is the birth might take place two or three weeks earlier than the 18th April? A. Yes, a fair proportion.

(To Court :

Q. From the date of birth is it possible to reckon back. Is it scientifically a correct thing knowing the date of birth to subtract 280 days and 10 say? A. It is not scientifically accurate but you might get an idea when she conceived. Those methods are not very accurate.

Q. For practical purposes that is assumed to be the date? A. You can get some information).

Q. This child was $6\frac{1}{2}$ lbs. in weight? A. Yes.

Q. Does that fact in itself indicate the child was a premature child? A. No, not in itself.

Q. As a matter of fact I have a publication of your own on the subject of foetal deaths in Ceylon, that is deaths in the womb? A. That would not necessarily be in the womb but still births chiefly in the 20 wombs of women.

Q. In the Column under gestation you have given a large number of cases where you say a child of $6\frac{1}{2}$ lbs. is a full term child, 6 lbs. premature, and so on? A. Yes, but that is not the sole criterion. A child of 6 lbs. may sometimes be a full term child and sometimes premature.

Q. Of course you did not take any measurements of the length of the child nor did you yourself have other facts? A. No except the general appearance.

(To Court :

Q. Is it necessary for a doctor to make an examination to see 30 symptoms of prematurity? A. Not necessary.

Q. Very often by the size of the child you can say, no examination is necessary? A. Yes.

Q. But in certain cases one has to? A. Yes.

Q. If a 7 month child was born can you say without any examination? A. Yes, in the majority of cases. But at 37 to 40 weeks it may not be easy).

Q. In the 7th month it is possible to say whether the child is premature? A. Yes, in the majority of cases.

Q. But when you come to the 8th or 9th month it is difficult? 40 A. The degree of maturity it is difficult to say.

Q. Unless a very close examination is made? A. Yes.

Q. As a matter of fact the weight of the child is practically the same between the 8th and 9th month? A. I do not think so.

Q. It is fairly well developed in the 8th and 9th month? A. It must develop to full maturity, weight, length, etc.

Q. Counsel reads a passage from Taylor at page 47. "Complete development.....the general opinion is that an 8th month child cannot with any certainty be distinguished from one born in the 9th month?"

A. 10th month is the full term. Taylor is referring to the lunar months.

(To Court :

10 Q. Do you say definitely this child could not have been conceived on the 11th June? A. I would not say it is impossible.

Q. According to your inference the probable period is somewhere round about that date in July? A. Yes.

Q. Do you say that the other date is wrong? A. It is not scientifically impossible because there are so many variations in the weight and so on.)

Q. If as a matter of fact as you say the child was conceived some day after the 10th to 14th July and the child was born on the 26th March that child would have had according to normal ordinary calculations a foetal life of how many days? A. 259 days. It should be 258 days from the date of the menstrual period.

Q. How many lunar months would that be? A. 37 weeks, that means three weeks less than 280 days.

Q. How many lunar months would that be? A. 9 lunar months and six days.

Q. Therefore this child when it was born was in the 10th lunar month? A. Yes.

Q. Past the 9th and in the 10th month? A. Yes.

Q. Would you expect therefore in this particular case a well developed full term child to be born? A. Yes but not necessarily. The child that was born was apparently a full term child.

Q. If you calculate that way by calendar months also you will find that the child is in the 9th month—8th month and a few days? A. Yes.

Q. Therefore calculated in terms of calendar months would you say the child was in the 9th month when born? A. Yes.

Q. And therefore you would expect what you call a full term child? A. Not completely but a fully developed child.

Q. It would be a full term child if such a child was born on 26-3? 40 A. Yes. It was a normal delivery.

Q. And there was an earlier rupture of the membrane A. That is what I heard.

Q. On examination you found that that was so? A. Yes.

No. 30
Defendant's
Evidence
Dr. Wickre-
masooriya
Cross-
examination
—continued.

(To Court :

Q. So you had to perform a dry delivery ? A. The fact that the membrane had ruptured did not interfere with the normal course of labour.

Q. Did you meet Dr. Fernando ? A. No, he phoned me up and I asked him to take it up himself because I did not want to take the responsibility of getting her down in the night. The rupture of the membrane is at the end of the first stage of the labour. This was a premature rupture so I did not like to have her brought to Colombo and complicate matters.)

Q. You say it was a premature rupture ? A. Yes. 10

Q. But that does not necessarily mean that with the rupture labour begins ? A. It is the end of the first stage, normally sometimes they start labour with the rupture.

Q. The premature rupture may account for the earlier delivery of about 10 days ? A. May.

Q. During the period of foetal life it is not possible to estimate accurately with mathematical precision ? A. It is impossible to be absolutely sure I can only make an approximate guess.

(To Court :

Q. Is that not the same with regard to every medical opinion ? 20
A. Yes, because there are so many exceptions and modifications.)

Q. What is the highest period of gestation you consider possible as a practical obstetrician ? A. I know from literature that there are a number of cases where gestation had exceeded 320 days. In my experience I have found it is not uncommon to exceed the period by about three weeks. Or 280 days plus 3 weeks.

Q. Not more ? A. No. Sometimes it may be more but in such cases there may be a fallacy as to the dates and various other things.

Q. In the Medical world there are cases where the period has exceeded to over 331 days ? A. Yes, I have read that. That would not be a so normal case.

Q. In the case of Gascol vs. Gascol the period of gestation was 331 days ? A. Yes. (Counsel says that Taylor refers to that case at page 54).

Q. And the lowest period ? A. A child that will live.....

Q. Can a six months child live ? A. Theoretically now the period is 28 weeks but almost all the children born then do not survive, but if it is 32 weeks sometimes with special care and treatment it is possible. 36 can be regarded as a safe period for the child to survive.

Q. As a matter of fact you are aware of the case in the English courts 40 which excited great interest in forensic circles and many medical jurists where the foetus was 174 days old ? A. I have heard of that case.

(To Court :

Q. What is the shortest period of gestation with regard to Joseph Richard? A. In my conclusions I have mentioned that.)

Q. May we take the limit to be 174 days and 331? A. I have to consider the question of a child that has reached full maturity. These cases that are referred to we have not enough data to base an actual opinion on and they may be premature ones. Full maturity in such cases I rather think is one of the rarest exceptions. I have not seen such cases in this country.

10 Q. You say that the average period of gestation as accepted in the medical world would be about 280 days? A. There also a little correction is needed. 280 from the first period. Scientifically the period of gestation is not constant but a variable factor. There may be a difference of 7 days or more.

Q. In reckoning the 280 days the point at which you begin is the last date of menstruation? A. The first day and the last day.

Q. From the first day of the period the conception may take place at any time between that date up to the next date when menstruation is due? A. Conception can scientifically occur at any time during the 20 inter menstrual period but there are other periods which are more likely.

Q. You say that there are certain periods during that month when conception is more likely to occur? A. Yes.

Q. It can take place at any time during that month? A. Yes, that is my opinion.

Q. You are supported by well known authority with regard to that? A. I think so.

Q. When do you say is the time when that particular fertilization is more likely? A. For fertilization to be effected the sexual act should coincide with the period of ovulation, the ovum must be in the 30 womb ready to receive the spermatozoa. That would be more likely during the middle of the period but I have seen cases where it has occurred just after or just before the period is due.

Q. You said that usually it is in the middle of the period? A. In the average case.

Q. But that applies to cases where the woman has a regular cycle of 28 days? It is rare to find women with an absolute 28 days cycle?

A. Most women are irregular in the sense that there is not a six days interval between the periods, so although she says she is regular she is not really regular, there may be a difference of from one to six days.

40 Q. As you say it is extremely difficult to find a woman with a fixed cycle of menstruation? A. Yes.

Q. You say that the normal woman ovulates during the mid period? A. In the average case.

No. 30
 Defendant's
 Evidence
 Dr. Wickre-
 masooriya
 Cross-
 examination
 --continued.

(To Court :

Q. That is to say after the menses have finished certain egg cells come and remain in the womb? A. Yes.

Q. Till they are washed away by the next menstrual flow? A. Yes.

Q. While they are there impregnation can take place? A. Yes, but there also there is a limitation, within 48 hours of the ovum coming into the womb it has got to be fertilized.

Q. If a woman ovulates a month and that takes place in the middle of a cycle.....? A. But my belief is that some ovulate twice and 10 those women are more fertile than the rest. The life of the ova is very short.

Q. You say the average woman ovulates during the mid period? A. But there are so many exceptions.

Q. I am coming to them. Statistics have shown that about 60 per cent. menstruate and have a cycle of 28 days? A. Yes.

Q. The other 40 per cent. are what you call women who menstruate irregularly? A. Yes.

Q. That is their cycle may change from 19 to 28 or 35 or 40 days? A. Yes. 20

Q. Ogino and Knaus are the exponents of a theory that in women with a normal cycle of menstruation ovulation takes place during the mid period? A. Yes, they have done work on that, they originated that theory but I do not think it is universally accepted.

Q. But it is very strongly supported in the medical world, do you support it? A. My own experience is that I cannot be in absolute agreement with that.

Q. Then is it your belief that people with a normal cycle of menstruation even may ovulate and conceive not at the mid period but at some other time of the month? A. Possibly. 30

Q. Under particular sexual excitement or if they have had no intercourse for a long time or any other such circumstances it may fertilize outside the middle period? A. I believe exceptionally it is possible, it is not the rule. Taking the analogy of the lower animals we know that it takes place in the case of the rabbit only at copulation but in the case of the human being it is now believed that it takes place between the 12th to 17th day, but there may be variations.

Q. (Ogino and Knaus' theory put to witness). Can you account for that in the case of regularly menstruating women? A. My explanation for that is either at the impetus of a sexual intercourse ovulation 40 takes place or some women ovulate more than once.

Q. (Shown page 26 of Cox on Clinical Contraception). Do you accept this as an authority? A. Yes, I have heard of him.

Q. The Enaus and Ogino theory was that anything outside this mid period is what is called the safe period? A. Yes.

Q. And they advised people who did not want children to have intercourse outside the mid period? A. Yes.

(Reads page 26 of Cox) "Knaus maintains.....fertility."

Q. Do you agree with that view? A. Generally.

(Counsel reads on up to the words "maximum fertility.") I agree with that.

(To Court :

10 Q. That assumes that no contraceptives are used of any kind?
A. Yes.)

Q. Dr. Theobald is a well known authority on the subject? A. Yes.

(To Court :

Q. There are two ovaries, normally one egg cell comes down. May it not happen that two may be discharged at two different times of the menstrual period? A. That is possible.

Q. Normally one escapes and the others do not rupture and escape out between one menses and another, only one comes down? A. Yes.)

20 Dr. Theobald was known to me personally. (Counsel puts to witness the article published in the British Medical Journal of 23-5-36. The passage beginning with "It may be assumed up to the words 12th and 17th day of the cycle read to witness.) (Witness says). That is correct.

Q. And that the Spermatozoa.....cannot live for more than 48 hours? A. They may live but not capable of fertilizing. The spermatozoa can remain in the tubes for two or three weeks sometimes but although it lives for two or three weeks it is usually thought they cannot fertilize.

Q. "Conception may take place on any day of the cycle"? A. 80 I quite agree.

Q. "Even during menstruation"? A. Yes. I have a record of women becoming pregnant on the 27th day before her period was due.

Q. There is no definite rule? A. You cannot say in a particular case whether it is the rule or the exception.

Q. I was dealing with the case of women who regularly menstruate with definite cycles? A. Yes.

Q. They are very rare? A. Between the period of 1 to 6 days, it is absolutely like clock work, though they think it is so.

Q. In the case of women who irregularly menstruate can you say 40 with any precision when these women ovulate? A. It is impossible ovulation may take place at any period between the two menses but they occur commonly at a certain time.

No. 30
Defendant's
Evidence
Dr. Wickre-
masooriya
Cross-
examination
—continued.

Q. Assuming that a lady menstruated on the 12th of July, when would her next menstrual period be again? A. It is difficult to say. It might be within 28 days or 30 days.

Q. It depends on whether she is a lady with a normal cycle or irregular cycle? A. Yes.

Q. Assuming that she menstruated on 12-7 and that she had intercourse with her husband on 9-8 before her next period. Would the next period be before 9-8 or after 9-8 would be well within the intermenstrual period? A. I cannot say.

Q. Assuming that she menstruated on 12-7 and she had intercourse on 9-8 could she have conceived on that day? A. It is difficult to say unless I got more information with regard to her periods.

(To Court :

Q. Did she give the date as 12-7. Was that her last menstrual period? A. What she gave was 11th to the 14th).

Q. Assuming that she menstruated on the 12-7 and had intercourse on 9-8 before her next period could she have conceived on that day on the 9-8? A. It depends on when her next period was due. Because if the intercourse took place a day or two before the period was due although the coetus may have resulted in fertilization it does not follow that pregnancy can result.

Q. There is a case by Dr. Theobald that people who had intercourse the day before the period was due conceived? A. That is rather exceptional.

Q. What is your answer to that? A. It is possible though it is unlikely.

Q. If a woman is capable of ovulating at any time she could also be fertilized at any time? A. But the fertilized ovum may not result in pregnancy.

(To Court :

30

Q. Last menstrual period 12-7. Husband has connection on 9-8. That is the only connection. Child born 26-3. Is that possible? A. It is possible. It is not impossible.

Q. In other words that is a time when Joseph Richard could have been begotten? A. 32 weeks and six days.

Q. Is that a period in which this child could have been begotten? A. 32 weeks and 6 days suggests a premature child.)

Q. How much premature? A. If we take for granted 40 weeks as the rough period of gestation then it would be premature by 7 weeks and one day.

40

(To Court :

Q. That is a large margin? A. Yes, I think so).

Q. You say this child was 230 days on 26-3 if conceived on 9-8?
A. Yes.

Q. But calculating from the notional date? A. 32 weeks is more accurate.

Q. Calculating from the notional date that is the date of the last menses 12-7 it would be how many days? A. 37 weeks or 258 days.

Q. What is the normal gestation of a child, full term child that is born? A. It used to be thought to be 273 days but it certainly is less, 265 to 270. The normal period of gestation is 265 to 270 days, but it is 10 variable.

Q. That is calculating from the last date of menstruation? A. That is from the date of conception as known.

Q. Ordinarily what is the period of gestation after which a normal child is born? A. That is a very variable figure.

Q. Normally you say it is 280 days? A. Yes calculating from the last menstrual period.

Q. Will you please calculate in the case of this child the period of gestation from the last menstrual date? A. It comes to the 19th April.

20 Q. Will you count from 12-7 the number of days to 26-3? A. 258 days. That is from the 11th July.

Q. Now the difference between 258 and 280 is how much? A. 22 days.

Q. So you say this child was a premature child on that calculation? A. There is a degree of prematurity.

Q. But not such a degree as to be obvious? A. No.

Q. As a matter of fact would you not expect the same characteristics in this child born on the 258 day to be present as in a child born on the 280th day? A. No.

30 (Counsel reads the judgment in 108 L.J. Pro, 92 also reported in 2 A.E.R. 1939, 59).

(To Court :

The age of a viable child is 28 weeks.)

Luncheon Interval.

Sgd. R. F. DIAS,
D. J.

DR. G. A. W. WICKREMASOORIYA.

XXD.

Q. In the majority of women menstruation takes place every 28
40 days? A. Not in the majority, a fair proportion of them.

No. 30
Defendant's
Evidence
Dr. Wickre-
masooriya
Cross-
examination
continued.

Q. And we may assume may we that the average period of gestation is 280 days? A. Calculating from the last menstrual period in a woman who is menstruating regularly.

Q. But actual period of gestation that is the actual length of time would not be 280 days but a number of days less? A. Yes.

Q. That is because the date of conception may be or is different from the last date of menstruation? A. Quite right.

Q. So that the taking away of 28 days from the 280 days the child may be conceived on any day between the 252nd day and the 280th day? A. Yes. 10

Q. So that a child born on the 256th day would be a mature child bearing the same characteristics ordinarily speaking as a child born on full maturity on the 280th day? A. That is taking it for granted that the period of gestation is reckoned as lasting 280 days.

Q. Why do you say lasting 280 days the normal period. It is reckoned from a certain notional date but conception may have taken place at any time from the last menstrual date. Therefore the child may have been conceived between the 252nd and 280th day? A. It is possible.

Q. A child born 256 days after reckoned from the notional date would be a full term child? A. If we argue that the gestation period is a constant but the gestation period itself may vary.

Q. Where you know that conception has resulted from an isolated act of coitus we are in a position to ascertain the actual date of the foetal existence? A. Yes.

Q. In this case it is 230 days? A. That is the maximum.

Q. So that if we had another 28 days to it or 26 days to it we get 256 or 258 days? A. Yes.

Q. So that when we say the child is 280 days in terms of the notional period it means it had an existence of 256 or 258 days? A. Not necessarily. 30

Q. That is the extreme limit? A. Yes.

Q. Normal period of pregnancy is reckoned from the last menstrual date? A. Yes.

XXD. By MR. OBEYESEKERA.

Q. You describe the child as a fully developed child? A. Yes.

Q. Would that position apply to any child that had not present any physical abnormality? A. There was no physical abnormality present.

Q. You would therefore describe the child as a fully developed child? A. Not for those reasons. The child had the full weight degree of development, etc., that a normally fully developed child had. 40

Q. Did you give your mind to the matter particularly? A. I did to a certain extent.

Q. No more than you would do in any other case? A. A little more because I thought there was trouble brewing. I was present when the child was weighed.

Q. Did you know at that time there was any trouble? A. Yes.

Q. What precisely do you mean by saying that you paid more attention? A. I knew the case would come to Court and I had a good look at the child. There were various other special methods of
10 ascertaining but I did adopt them.

Q. At the time of delivery did you know the question of legitimacy would be involved? A. I did not know that so much. I knew a divorce case was coming.

Q. You took the precaution of weighing the child in your presence? A. Yes and the normal examination.

Q. A 6½ pound baby would not be a big child? A. It was not a big child.

Q. What is the normal weight of a child? A. I think 6 to 6½ and up to 8.

20 Q. Nine would be a big child? A. It is more than the average.

Q. It is not an unusual occurrence to have a 11 lb. baby? A. Rather uncommon.

Q. There are cases? A. Yes.

Q. First of all on the question of determining during pregnancy how many months the child is there are more than one method you can adopt? A. Yes.

Q. Shown passage from Gelatine & Madill on Midwifery 1929 Edition page 256. "The probable date of delivery may be determined in four different ways from the date of the last menstruation from the
30 date of quickening from the height of the uterus and the length of the foetal ovoid?" A. Yes.

Q. Actually you made no attempt during the pregnancy on the occasions on which you say the lady to adopt the 2nd, 3rd or 4th methods? A. No.

Q. In October, November and December the lady came to see you had quickening taken place? A. Quickening is not a very reliable guide. It is only the subject of experience given by the patient. It is experience by the patient and it is possible she may mistake some other thing for quickening.

40 Q. It is correct to say that you did not endeavour to ascertain when the birth could take place from the date of quickening? A. No.

Q. Nor did you at any time take the height of the uterus? A. On the first examination I did. That is on the 23rd October.

No. 30
Defendant's
Evidence
Dr. Wiekre-
masooriya
Cross-
examination,
—continued.

Q. Can you tell the Court what was the result? A. I have noted that the top of the uterus was 4 finger breadths above the pubic bones that is the pubes.

Q. What would that be in inches? A. My four finger breadth measures $3\frac{3}{4}$ inches.

Q. Page 217 of the same book put to witness. 4" at the 16th week? A. Might be but it may not be absolutely accurate.

Q. You will not accept it? A. I think there is some disagreement among most of these authors of text books.

Q. Did you take the length of the foetal ovoid at any time? A. 10 No.

Q. During the pregnancy the only real data available to you was the date of the last menstruation? A. Yes, and the height of the uterus.

(To Court :

Q. At that time this question had not arisen? A. No.

Q. You did not give your mind to it? A. No.)

Q. You were advising the lady when she was going to be confined? A. Yes.

Q. That is also an important matter for the lady? A. Yes. 20

Q. In December on the 17th December plaintiff quite definitely told you that the last menstrual period had started on the 14th July? A. 11th to 14th and she had a one day period on 11th August.

Q. Did you attach any importance to the fact that she had a one day period of menstruation in August? A. I thought it was not a normal period but that it had occurred after she had conceived.

Q. That is possible? A. Yes.

Q. Does it happen in very many cases? A. In the first few months there may be a menstruation over a shorter period.

Q. You told us she had her menses during the 11th to 14th July? 30 A. Yes.

Q. And you made a certain calculation and you thought she will have her confinement about the 18th April? A. Yes.

Q. She saw you after that date too? A. Yes, on the 13th January and again on 11th February.

Q. And again in March? A. 17th March.

Q. On all those three occasions you saw her you were of opinion that the previous calculation you had made was a correct one and that the confinement would take place about the 19th April? A. I also had made an observation that actual delivery may take place about two or 40 three weeks earlier.

Q. Had you on the three occasions you saw her any reason to revise the opinion previously expressed? A. None whatsoever.

Q. In other words you had no reason to suppose that the lady had given you an incorrect date of menstruation? A. I did not think so.

Q. On the 17th December was the date you gave the information and you know there was trouble on that date? A. No. As far as I remember there was no trouble.

Q. On the subsequent occasions you saw her you had no reason to suppose from what you saw the appearance and examination that she had given you an incorrect date? A. No.

Passage from Johnston's Midwifery page 97 put to witness. I accept that statement.

Q. The position then in this case would be at no time had you reason to suppose that the data furnished to you by the lady was incorrect? A. No.

Q. That being so would you say that the date of conception might have been on a date between the 14th July and 11th August? A. A woman can menstruate while she has conceived.

Q. 28 to 20 days from the last menstrual period? A. She had a little discharge on the 11th August.

Q. 28 to 30 days and add it to the 14th July you reach approximately the 11th August? A. Yes.

Q. Would you then concede that conception might have taken place between those two dates? A. It is more likely to have occurred in the earlier days. It is possible it might have taken place during those dates.

(To Court :

The probabilities are she conceived between the 19th and 27th July. Those would be the more probable dates.)

I can't be absolutely certain about that—nobody can.

Q. In point of fact I suggest it is within the region of possibility that conception took place very near the 11th August? A. In the absence of the whole menstrual history it is rather difficult to express an opinion here on this point.

(To Court :

Q. Could this child have been conceived on the 17th April? A. No.

Q. The question then arises as a medical expert could you exclude the possibility of her conceiving owing to an intercourse on the 9th August? A. The 9th August is the 30th day of her menstrual cycle. The probabilities are that even if she had a fertile coitus on that date it may not have resulted in pregnancy because if the period was just due most likely the fertilised ovum would be cast away with the menstrual discharge.

Q. Could you as an expert say that that is excluded? If you can't do it the medical evidence fails and the child must be presumed

No. 30
Defendant's
Evidence
Dr. Wickre-
masooriya
Cross-
examination
—continued.

to be legitimate? *A.* I cannot make an absolutely certain statement. I can say the chances are against conception. That is that conception is rather remote.

Q. But you can't definitely say it was not? *A.* I can't exclude the possibility.)

Q. One fact you took into account in expressing that opinion was the menstrual cycle was about to terminate? *A.* Yes.

Q. The menstrual cycle extends as much as to 40 days? *A.* It might.

Q. And particularly in the case of a woman whose menstruation is 10 irregular it may extent to 40 days? *A.* Yes.

Q. If it could extend the position is that it may possibly be the result of a coitus on the 9th may be strengthened? *A.* Better prospects.

REXD.

No. 30
Defendant's
Evidence
Dr. Wickre-
masooriya
Re-exami-
nation

Q. When you were treating her the first time if there had been any abnormality in the menstrual cycles that would be a matter that would be brought to your notice? *A.* Yes.

Q. You have no recollection of any abnormality? *A.* No.

Q. That is in the first confinement? *A.* Yes. 20

Q. You were treating her for a retroverted womb? *A.* Yes.

Q. You say you insufflated the tubes? *A.* Yes.

An examination revealed this was an retroverted womb. I put down the sterility to that.

Q. The treatment was that on two occasions you insufflated the tubes? *A.* Yes.

Q. You would not resort to insufflation unless there was ovulation? *A.* You will have to investigate further. At that time I took for granted that her sterility was due to displacement of the womb along with the tubal block. 30

Q. If she was abnormal in her menstruation you would not adopt that course? *A.* I would have adopted that treatment because that treatment is necessary as a method of treatment. That is one of the things one usually does.

(To Court :

Q. This lady was without a child and they were wanting a child? *A.* Yes.

Q. In the course of that did they not say she was irregular in her menstruation? *A.* It did not create a big impression in my mind).

Q. The treatment you accorded was not due to a diagnosis of irregular 40 menstruation? *A.* No. It was entirely a treatment for sterility and incidentally I had to treat for that.

Q. Your treatment was so successful that the lady had a baby?
A. Yes.

Q. You were asked whether you could exclude the 9th August as a possible date of conception?
A. Yes.

Q. You said it was not an impossibility but you said you could not take.....?
A. Yes, I was supported by the other findings. The other findings also influenced me. That was supported by my subsequent observation.

Q. You told us you did not adopt any of the later methods?
10 Yes. A.

Q. You went more on the statement in regard to the menstrual period?
A. In an ordinary uncomplicated case the other methods are not wanted. I thought her statement was correct.

Q. You told us the child was fairly developed?
A. Yes.

Q. You had a good look?
A. I examined the child.

Q. What are the signs of premature birth?
A. We go to a great extent by the weight and most children below 5 to 5½ lbs. are considered premature. The length is also considered but I did not take the length of the child. The appearance of the child.

20 Q. That being?
A. The appearance suggested a fully developed child.

Q. Will you please particularise in regard to appearance? Condition of the skin had it anything to do?
A. The skin was smooth. There was sub-cutaneous fat. Finger nails had developed beyond the tips.

Q. The hair?
A. She had a good growth of hair.

Q. The movements and cry of the baby?
A. He cried lustily. Took to the breast and sucked vigorously. The testicles entered the scrotum.

Q. He had a full uterine development?
A. Yes.

30 Q. When you are given the exact date of coitus how would you reckon the gestation dates—the possible date of delivery?
A. If that coitus resulted in pregnancy the duration of gestation would be practically from the date of coitus to the date of delivery.

Q. Suppose on the 9th August a fruitful coitus took place when would that child be born if the child born was a mature child? Could the child be born on 26th March?
A. It would not be a mature child.

Q. A child conceived as a result of coitus on the 9th August?
A. I think the child would be a premature child. It would be a premature child.

40 Q. The child did not turn up to be a premature child?
A. No.

Q. If coitus took place on the 9th August fertilisation would take place at some place subsequently?
A. Very close to that period.

Q. Thirty-six hours of 48 hours?
A. Within a few days at most.

Q. Can you place any limits? **A.** The spermatoza germ cannot survive long. The ovum lasts for 24 hours or less.

Q. For a pregnancy to result the ovum must be ready, the ovum must be fertile and the spermatoza must be fertile? **A.** Yes. Conception must have taken almost near that date.

Q. Assuming a husband who had been abstaining for several months had intercourse with his wife it would have some influence—the propulsive power would be greater than ordinarily? **A.** The sexual act may be functionally more efficient.

Q. Suppose a fruitful function took place you say if the child was born on the 26th March you would expect to see a premature child? **A.** Yes.

Q. The meeting of the ovum and the spermatoza takes place at the outer end of the fallopian tubes and travels down the uterus and gets embedded in the uterine wall? **A.** Yes. That takes about 9 to 10 days to complete.

Q. Would you count the period of gestation as commencing from there? **A.** It is normal to consider from the time of fertilisation.

Q. If she were menstruating regularly in 30 day cycles there is 9 days taken by the fertilised ovum to get embedded in the uterine walls? **A.** That is what most authorities say.

Q. During that period would she be menstruating? Her menstrual cycle would be the 30 day cycle. Assuming the coitus took place on the 9th it would take you to about the 18th August before the fertilised ovum gets embedded in the uterine wall? **A.** Yes.

Q. Before that she would normally be menstruating? **A.** Yes.

Q. Menstruation stops because the cervix have been plugged? **A.** No. Menstruation is really a preparation for conception. When the conception does not take place the menstruation occurs. When conception occurs then menstruation is inhibited by control from the brain cells.

Q. Assuming that menstruation was normal menstruation during the period of travel of that ovum from the outer end of the Fallopian tube until it got embedded in the uterine wall on the basis she had her menstruation on the 14th July? **A.** Yes.

Q. In the course of that menstruation the fertilised ovum would be expelled? **A.** That is a theoretical consideration—that is what most authorities say.

If the fertilised ovum does get embedded firmly it will stay otherwise it will get washed away. If it is secure the menstruation will stop. 40

A fertilised ovum does not get embedded before the onset of the period—the chances are it will be washed away. The embedding must be complete a day or two before the next onset of the period.

Q. Embedding in this case would have taken place when—will you tell me if the coitus was on the 9th? A. It will be on the 18th.

Q. It must be embedded one or two days to be secure? A. Yes.

Q. If the onset of the next menstruation was before the 20th you will expect that ovum to be washed away? A. Yes. The conception may not result in pregnancy. I cannot be dogmatic. Perhaps Dr. Theobold says.....

Q. So far as your experience goes how long have you been the obstetrician in the Lying in Home? A. 12 years.

10 Q. How many cases? A. Several thousands.

Q. Your experience is unique? A. Yes.

Q. Your experience is greater than Theobold's? A. The same if not more.

Q. You can speak to a case where the conception took place one or two days before the menstrual period? A. There was a case which suggested that possibility. There was a suspicion.

Q. The proximity to the menstrual cycle—you say that coitus on that day could not result in conception? A. Could not result in pregnancy.

20 Q. Apart from that you also told us that if conception did take place as a result of coitus on the 9th you would have expected a premature child? A. I would have expected a degree of prematurity which I did not find and which should be recognisable.

Q. When you were concerned with the development taking place the intra uterine development depends on the actual life of the foetus in the womb? A. And the state of health of the mother.

Q. A run down mother a mother who was falling ill from time to time would normally have a smaller child? A. Very often.

30 Q. You told us this lady was ill from time to time? A. She was really run down in health.

Q. Anæmic? A. She looked very emaciated. Later when she came on she looked better but still she was not of normal health.

Q. There was also by that time trouble—of this threatened case? A. I first heard of the trouble when she stated her troubles to me on one of her visits.

Q. Can you tell me when that was? A. That was most likely January or February.

Q. Those troubles also would have a tendency to affect her nerves? A. Yes.

40 Q. In spite of that the child was 6½ lbs.? A. Yes.

Q. Shown P23. The first pregnancy you attended on her from the very first month? A. Yes.

No. 30
Defendant's
Evidence
Dr. Wickre-
masooriya
Re-exami-
nation
—continued.

Q. You remember the house in which you attended on her—Have-
lock Road? A. Yes.

Q. Then she was having a haemorrhage? A. Yes. She was
in bed for a considerable period in the early months. I think there was
some little discharge and there was evidence of a threatened abortion.

Q. There was always a fear of a threatened miscarriage? A.
Yes.

Q. You had that history before you? A. Yes.

Q. That is why you gave this prescription? A. I gave this
prescription in view of the fact that she was ill at the time. I did not
think of the past.

Q. Your calculations went on the basis that she was a normally
menstruating woman? A. Yes.

Q. You told us doctor on the first occasion she did not mention any
date of menstruation? A. She mentioned her last menstruation
period on the 17th December.

Q. You say your functions are somewhat different from that of a
medico legal expert you generally have ladies coming to you—they come
and tell you something and you believe them? A. Yes.

(Websters Legal Medicine and Toxicology 1930 edition page 202). 20

Sgd. R. F. DIAS,
D. J.

No. 30
Defendant's
Evidence
Dr. N. Atty-
galle Exami-
nation

NICHOLAS ATTYGALLE, affd. Visiting Gynæcologist, General
Hospital, F.R.C.S. (England), F.R.C.O.G. (Great Britain), Lecturer in
Gynæcology, University of Ceylon.

I have been in Court while Dr. Wickremasooriya gave evidence.

Q. You have heard the evidence that the child born on 26th March
was in the opinion of Dr. Wickremasooriya a mature child and did not
bear any signs noticeable by him of premature birth? A. Yes.

Q. It is the case of the parties that the first defendant had possible
access to the plaintiff on the 9th August and 9th August only? A. Yes.

Q. The 17th April was one day and the other was 9th August?
A. Yes.

Q. The child according to Dr. Wickremasooriya was not premature—
what would the uterine life of the child be? A. From the 9th August
to 25th March? 230 days.

Q. If the coitus was on the 9th August fertilisation would have been
how much later? A. That varies.

Q. Minimum and maximum period? A. That varies with what
ova passed out from the ovaries. Because I know according to modern 40

medical science it is not supposed to live more than 36 hours. The life of the spermatozoa is about 48 hours. Its power of living is longer but the ability to fertilise is 48 hours.

No. 30
Defendant's
Evidence
Dr. N. Atty-
galle Exami-
nation
—continued.

Q. What is the maximum period of ovulation? A. That varies according to the menstrual cycle of women.

Q. Assuming a normal menstrual cycle? A. 28 days cycle taking a normal 28 days' cycle she would ovulate from the 9th to the 17th day from the first day of menstruation.

Q. You are given the date of the child's birth as 26th March without any signs of prematurity will you tell me within what period you would fix the conception of the child? A. Fully matured child.

Q. That child which was born on the 26th March which was fully matured will you give us the limits of conception period of the child? A. It would be this. Roughly calculation—you want the time when conception occurred.

Q. As far as possible? A. About 270 days prior to 26th March.

Q. Take the 270 days back and give us the date? A. 270 to 275 days. That is about the 24th June.

Q. That is variable sometimes? A. Yes.

Q. Will you tell me what the extreme limits of variability will be? A. It is rather difficult to put the limit.

Q. Roughly? A. You are not asking me the menstrual date but the gestation period?

Q. Yes. A. Put another two weeks either side.

Q. Those are the limits according to you? A. Yes.

Q. On the one side it will be about the 4th June the other way will be 14 days from the 14th July? A. Yes.

Q. The time between which conception took place? Yes.

Q. Not 9th August? A. No.

30 **XXD. by MR. AMERASEKERE.**

Q. You said you would count a period of 270 to 275 days on the average? A. Yes.

Q. The normal period of gestation is said to be 280 days? A. It is not 280 days. The normal period for counting from the last menstrual period.

Q. The 270 or 275 days how is it to be reckoned? A. That is the average period.

Q. How is the period reckoned? A. From the fertility period.

Q. Which is always a matter of doubt? It is not a matter of doubt. Fertility period is not a doubt. There are variations in the fertility but the assessable fertility period there is no doubt. There is not the normal fertility period but there are abnormal cases.

No. 30
Defendant's
Evidence
Dr. N. Atty-
galle Cross-
examination

No. 30
Defendant's
Evidence
Dr. N. Atty-
galle Cross-
examination
—continued.

Q. What is normal fertility period? A. The normal fertility period is the ovulation period.

Q. And normally when does a woman ovulate? A. 9th to the 17 days from the first date of the menstruation period.

Q. And that applies to a woman who has a regular cycle of 28 days?
A. Yes.

Q. That will be different in the case of people who have irregular menstrual periods? A. Yes. The normal and abnormal menstruation and ovulation are different things. Some women "bleed" without any ovulation taking place. Normally women will consider it a menstrual period but there is really no ovulation. Certainly "bleeding" taken as a menstrual period is not correct.

Q. Generally speaking doctor you say the fertility period in the case of women with irregular menstrual period is 9 to 17 days and in the case of women with irregular periods? A. That is usually about 12 days before the next period is due. That is in all cases.

Q. In the case of people with the regular cycle of 28 days what is the ovulation period? A. 9 to 17 days.

Q. Now if a woman has a cycle of 18 to 31 days? A. What do you mean? 20

Q. People are not menstruating properly. They are not normal cycles. In their case what is the fertility period? A. What do you mean? There is no fertility period for them, as they are "anovulatory bleeding".

Q. In the case of such a woman you cannot determine the date of ovulation? A. There is no ovulation at all.

Q. They are sterile? A. Most of them are sterile.

Q. Some are not? A. Those who have variable cycles of 18 days one month and 31 days the next month. They are not menstruating.

Q. Do they not ever have children? A. Not the type you put. 30

Q. Granting a woman like that? A. They do not usually have children unless their cycles get altered.

Q. Where a woman's cycle is 18 days one month, 24 days in another month and 31 days in another? A. I have never come across such a woman.

Q. A woman can't have a cycle of 30 days in one month, 35 days in another and even 40 days in the next? A. A woman who had a cycle of 18 days one month, 24 days in another and 31 days in the next month—I have not come across such people.

Q. You say such people are not properly menstruating? A. I 40 have not come across such people.

Q. Who are the women whom you characterise as irregularly menstruating? A. They are people having varying periods of menstrua-

tion in 28-day cycles, 35 days or 21 days and they vary a few days ; sometimes they have 21-day cycles, some people have 28-day cycles, some have 35-day cycles, some have 32-day cycles.

Q. Some of them vary in their cycles from 40 to 31 ? A. I have not come across.

Q. Where do you draw the line ? A. I draw the line at what I told you.

Q. At which point do you draw the line ? A. What do you mean ?

Q. You say there are people whose menstrual periods vary ? A. They vary for a certain time and they adjust themselves. There are women under me in my ward who menstruate once in 35 days. They menstruate for a number of days like that.

Q. Each woman has her own menstrual history ? A. Yes.

Q. And also her own menstrual cycle ? A. Yes.

Q. Hartman is a well-known authority on the subject of ovulation ?

A. Yes, he is an authority.

Page 63 put to witness.

(To Court :

Q. Do you know of any woman who could mark on the calendar the day they are going to have their menstruation in the future ? A. No.

Q. For instance for social engagements and things like that ? A. They have a probable date but they cannot say exactly.)

Q. In other words irregular menstruation appears to be a normal thing ? A. It is not irregular menstruation.

Q. You do not consider it as irregular menstruation ? A. The way you put it now and the way you put it before is different.

Q. Irregular menstruation seems to be the normal thing with women ? Irregular as to the date of appearance. That is common but not in the way that he put first 31-day, 21-day and 40-day.

Q. If she menstruates 21 days this month, 31 days the next month? A. I have never come across such a case.

Q. Have you read a case like that before ? A. A few days' variation on either end. A woman's expected date of menstruation may come two or three days earlier or later. The cycle may entirely vary. A woman who was entirely menstruating may change herself into 21-day cycles and it may disappear. The other bleedings are not menstruation they are irregular bleedings.

Q. You have already told us there may be variations from 22 to 40 days ? A. Yes.

Q. The difficulty is there could not be in your view variations from 18 to 30 days but from 28 to 40 you have come across ? A. I do not understand the question.

No. 30
Defendant's
Evidence
Dr. N. Atty-
galle Cross-
examination
—continued.

Q. A cycle from 18 days to 28 days you say you have never come across? A. There is no such thing as an 18-day cycle.

Q. Could the same person who menstruates one month in 18 days menstruate the following month in 28 days. In the third month 30 days? A. That does not happen.

Q. A woman who menstruates this month on the 18th day next month on the 21st day, then in cycles of 24 days, then 31 days cycles? A. She will go on for some time on a cycle and then she will change. I have never heard or read of a case like that.

Q. A woman may menstruate 18 days in one month next month in 24 days then she may not menstruate at all for a couple of months then she may menstruate on the 30th day? A. That is possible.

Q. Those menstruations are they irregular bleedings or whether they are menstrual periods..... A. They can't be explained by this method. Mostly those people are irregular anovulatory bleeding.

Q. They have a cycle of their own? A. They bleed—they are not normally menstruating women. I have a fair amount of them. I can show in my own ward a fair amount of women now. They bleed for one or two days then they stop for two or three months. They are abnormally bleeding. That is not what we consider as normal menstrual cycle. The only way we decide how they are abnormal is this way. We can't take the statement of the woman. What we take as a menstrual cycle because they are usually accompanied by ovulation but in these irregular bleedings we know they are abnormal bleedings we scrape the membrane and examine they are not as the result of ovulation. They are abnormal anovulatory bleeding.

Q. Do such people have children? A. Occasionally—non-menstruating women have children.

Q. Suppose a woman who menstruates regularly suddenly menstruates in 18 days, she changes her cycle and then after 24 days and then she suddenly ceases to menstruate at all and again begins to menstruate, would such a person have children? A. I can't answer that question because ovulation menstruation and child-bearing are entirely different things. For conception to take place ovulation must take place. If a woman ovulates she will conceive.

Q. Whatever her periods may be? A. Yes.

Q. But these irregular people are more predisposed to sterility than the people who regularly menstruate? A. Yes.

Q. In the case of irregular people it is not possible for one to say with any precision exactly when the ovulation period is? A. No. 40

Q. Can one say what the ovulation period is? A. I can't say whether they ovulate or not.

Q. In the case of an irregular menstruation woman if we knew her last date of menstruation can we say with any precision what her next date of menstruation will be? One would hesitate before one gives a date? A. I can't say.

No. 30
Defendant's
Evidence
Dr. N. Atty-
galle Cross-
examination
—continued.

Q. If you can't give the next date of menstruation it will not be possible for you to say if intercourse was had on a particular date whether on which date there would have been ovulation? A. I do not understand the question.

Q. Here is the case of an irregularly menstruating woman she has
10 intercourse on a particular day with her husband, you cannot then say whether she had as a matter of fact ovulated or whether she was impregnated on that day or whether her ovum is fertilisable on that particular day? I can't grasp the question.

Q. Here is a woman who irregularly menstruates, she has her own menstrual period on a particular day, you can't say when her next period is coming? A. I cannot.

Q. You cannot say then on what particular date she would be or could be ovulated? A. Yes.

Q. If she had intercourse on a particular day you cannot say whether
20 on that day there was an ovum to be fertilised unless the woman was ovulating on that day? A. I have no means of knowing whether she ovulates on that day. No one has any means of knowing that.

Q. But you would not know that on that particular day the ovum has been fertilised as a result of intercourse by the cessation of menses on the next date or for some months? A. Even then I would not know because you say she was not normally menstruating. Unless I make an examination I cannot say whether she was pregnant or not because she was not normally menstruating. If I make an examination after the impregnation has taken place, I can say she is pregnant otherwise I will
30 not be able to say.

Q. Assuming she had one act of coitus and there was no menstruation after that date you say being a person who irregularly menstruates by the cessation of her menses you will not necessarily infer impregnation? A. That is so.

Q. It is only when you examine her that you will be able to say? After I examine and see signs of pregnancy clinically I will say she is.

Q. You say after the third month you can say with a fair degree of accuracy? A. You cannot say the month—you can say with a certain amount of latitude. You can say pregnancy but as far as the number
40 of months it is a difficult matter.

Q. When you examine her in the third month? A. Any month.

Q. Why can't you say that? Is it because the growth of the foetus is not uniform? A. There are many factors.

No. 30
 Defendant's
 Evidence
 Dr. N. Atty-
 galle Cross-
 examination
 —continued.

Q. The factors are the size of the uterus you say? **A.** If it is a woman who has had several children or just before her premenstrual period the womb is big and there are normal variations and there are abnormal variations in size. The size of the womb does not depend on the size of the foetus only. The size of the womb depends on the size of the foetus and the amount of fluid in the cavicle.

Q. In other words the greater growth of the foetus does not depend on the number of months it is in the womb? **A.** It does.

Q. Is it uniform? **A.** Fairly.

Q. To what percentage is the discrepancy? Is there no known cir-10 cumstances? **A.** There are known indices.

Q. Why is it that some women after 270 to 275 days produce 11 to 12-pound babies, others 6 to 6½ pounds mature children? **A.** There are racial differences; there are characteristics of different people. There is the general health of people. All these vary. English babies weigh much more than Ceylon babies. That is a well-known fact. Eastern races weigh very much less than Western races.

Q. In the case of various individuals the period of gestation can't apply to determine the maturity of the foetus? **A.** Maturity does not depend on the size only. 20

Q. The weight and length are a good index? **A.** Yes. I did not consider any one sign as an index of maturity of a child. You have a general index—looking—and see whether the development is mature or not.

Q. So the decision is arrived at owing to a combination of several factors put together? **A.** Yes.

Q. The factors are weight? **A.** Yes.

Q. Length of child? **A.** Yes.

Q. And the general development? **A.** Yes. The development of the nails, the hair on the scalp, the condition of the skin, and condition of the testicles in the case of a boy. All those things are taken into account. The general appearance of the child, the cry of the child, the ability of the child to suck. All those things go together.

Q. All these factors will have to be observed by a doctor before he pronounced his opinion? **A.** It is very easy. Anyone who conducts obstetrics will observe.

Q. At every birth you have to see whether the child is a full-term child? **A.** Yes. Our instructions for the rearing of the child depends on that.

Q. That is the routine? **A.** Yes. 40

Q. For instance if a seventh month child is produced your instructions are different? **A.** Entirely different.

Q. Any way you have told us the development of the child does not depend on the period of gestation? A. What do you mean.

Q. Weight? A. Weight is entirely different from development.

(To Court :

Q. Take the case of a dwarf? It can be a full-term child? A. Yes. It would have very little weight.

Q. In this case all that you had to go on apart from the observations of the doctor who delivered the baby is the weight of the child? A. That is not what I heard from Dr. Wickremasooriya. He said the skin was smooth the sub-cutaneous fat was present. It would be preposterous on my part to express an opinion on the child, having those observations from Dr. Wickremasooriya. I entirely agree with him.

Q. In the case of a child normally the period of gestation would be about 270 days? A. That is menstrual delivery interval.

Q. From the first day of the last menstruation? A. Yes.

Q. Up to date of birth? A. 280 days.

Q. This of course applies to a case of women with average menstrual cycles? Regularly or irregularly? A. I do not agree with that. There is an explanation of 28 day cycles, 21-day cycles—210 days I do not agree with that theory at all.

Q. But there is a school of thought like that? A. I do not agree with that. It is an old school of thought. Our findings and the findings of many obstetricians are not so.

Q. Any opinion you express I will hold in great respect. A. I thank you.

Q. Other authorities in the medical world hold the contrary view? A. I do not consider some of them as authorities.

Q. Do those statements accord with your own experience? A. No.

Q. Other people have different views? A. Not eminent obstetricians.

Q. O'Bata the person in charge of the Tokyo Hospital? A. I do not know him.

Q. Dilly & Greenhill do you consider them an authority? A. May I look at the book?

(Book shown). I have heard of Dilly but I have not heard of O'Bata.

Q. You know Dilly is a well-known authority on the practice of obstetrics? A. He is a well-known American authority.

(Book read). The period of gestation was from 29 to 50 weeks? No answer.

Q. You accept that as a possibility? A. I cannot dispute that. This is his findings of cases and he reads a paper.

No. 30
Defendant's
Evidence
Dr. N. Atty-
galle Cross-
examination
—continued.

(Counsel continues reading the book.) No woman can know the date of conception. That is an impossibility. Even if there is one act of coitus it is impossible to say the conception took place on such a day.

Q. Do you cast doubts on the statement of O'Bata? A. I cast doubts on the statements read to me because no woman can state the exact date of conception. I say no woman can say exactly the date of conception. It is a physical impossibility for a woman to state because the date of the meeting of the ova and spermatozoa and no woman can say that date. She can only say the date a person had intercourse with her and the date her monthly stopped. 10

Q. Do you say that the period of gestation cannot be 233 to 280 days? A. I cannot agree with that statement.

Q. Apart from the statement do you say.....? A. If these statements are based on the statements of women who say so I can't agree with those statements.

Q. Do you say that the period between conception and delivery cannot possible be 235 to 280 days? A. I can't say that at all. I cannot agree with him in that the period of pregnancy is indefinite.

Q. This is what Dilly says? (Counsel reads the book). A. I entirely agree with that view. 20

Q. You said that you do not accept the statement that any woman could have known the date of conception was? A. Yes.

Q. Is there any doctor who can say? A. No.

Q. Is there any expert who can tell? A. None. But you could fix it within certain limits.

Q. There is no expert in this world medical or otherwise—no judge and no woman? A. I entirely agree.

Q. You said it could be fixed within limits—what are the limits? A. In a normal menstruating woman—supposing a woman menstruates on the 28-day cycle the ovulation period is 9 to the 17th day. Ovulation 30 takes place on any one of those days. Then we have on our knowledge found out that ova does not live more than 36 hours and further evidence is there for the point that a sperm cannot fertilise after 48 hours, though it may live longer periods. Living spermatozoa have been found in the tubes but its power of fertility is only for 48 hours. Then there is another circumstance which is accepted which is from Professor Teacher a well-known pathologist and investigator. He says it takes about nine to ten days for a fertilised ova on the outer side of the Fallopian tube to get embedded in in the uterus. There are other authorities who say specially German authorities—Gressner and others—that embedding of a fertilised 40 ova cannot take place between 48 hours before the menstrual cycle, because the inner membrane of the uterus cavity is about to break and it will get washed away. You have to leave off two days just before the menstrual period, a further 9 days for it to travel then we come to about the 17th

day. Then the ovulation period is 9th to 17th day. You can limit it to about 15 days. If you know the exact date of coitus you can limit it further, because you know that spermatozoa live only a number of hours.

No. 30
Defendant's
Evidence
Dr. N. Atty-
galle Cross-
examination
—continued.

Q. Therefore you must know the date of coitus and you must know the woman's menstrual cycle? A. Yes.

Q. In the case of people who have got the 28-day cycle or what we call the normal cycle what is the period? A. We can fix up to about five days. If you know the exact date of coitus you can limit it even less.

Q. A woman with irregular menstruation? A. I can't give any opinion on that.

Q. Now if you know the exact date of coitus even in the case of a woman with regular cycle how long would the period be how long—if you know the exact date of intercourse can you tell us how long it will take to conceive after the ovum is fertilised as a result of the coitus? A. Conception has taken place.

Q. From the point of coitus to the conception the interval can you tell? A. It must be less than 48 hours.

Q. When a woman says I have had coitus on such and such a day without the use of a contraceptive and she finds later that she has conceived if that is the result of an act of intercourse for all practical purposes she can say within one day that she has conceived—within one day from that act of coitus? On the 20th October the woman has intercourse with her husband, she conceives as a result of that. If she says: "I conceived either on the 20th or 21st that would be practically a correct statement to make?" How will she know that? She finds she is with child later as a result of that intercourse? If she has only one act of coitus and there is no other man in the case it must be right? A. Yes. If she had one act of coitus she cannot conceive on any other day.

Q. For conception to take place she must have intercourse with a male? A. Yes.

Q. When those 30 women mentioned to Bata the exact date of their conception it is really the date on which they had intercourse? A. Yes.

Q. If a woman had intercourse with her husband three or four times a week can you say when she conceived? A. No.

Q. That is why medical men calculate from the last menstrual period? A. Yes.

Sgd. R. F. DIAS,
D. J.

40 For want of time case postponed for tomorrow.

Sgd. R. F. DIAS,
D. J.

No. 30
Defendant's
Evidence
Dr. N. Atty-
galle Cross-
examination
—continued.

22nd December, 1942.

Appearances as before excepting that Mr. E. G. Wickremanayake is absent.

Adv. Mr. Silva says that Adv. Mr. E. G. Wickremanayake is not well enough to come today. I am informed that Mr. Wickremanayake is indisposed and on medical advice he is not well enough to attend Court today.

Mr. Amerasekera has no objection nor has Mr. Misso for the second defendant.

I think in the circumstances of the case the application must be allowed. No advantage is to be gained by continuing the trial particularly as it will last several days more but it must be distinctly understood that the trial will be taken up on the 13th January and if Counsel is unable to attend arrangements must be made for junior Counsel to proceed.

In any event the first defendant will not have the costs of today.

Mr. Salgado is warned to attend.

Sgd. R. F. DIAS,
D. J.

13-1-43.

Counsel as before.

20

DR. N. ATTYGALLE, affd.

Recalled. Further cross-examined.

Q. You were in Court when Dr. Wickremasooriya gave evidence?

A. Not at the very start but during the greater part of his evidence I was listening to his evidence.

(To Court :

Q. You have been called purely as an expert? A. Yes.)

Q. I take it that subsequent to the last date you have read the evidence given by him? A. Yes.

Q. The entire evidence? A. Yes.

30

Q. Will you please tell the Court whether you are in general agreement with that evidence? A. Yes I am in general agreement with the evidence given by Dr. Wickremasooriya.

Q. Are there any points on which you disagree? A. I am not in disagreement with him but there was a question which he answered in a certain way. There was a discussion on a hypothetical question.

Q. On that point you do not agree? A. Well on a hypothetical question a discussion was started between Counsel and Dr. Wickremasooriya and then I think a question was put from the Bench and he answered it hypothetically not in the sense he was made to answer it.

40

Q. Will you tell the Court what that question was? A. May I have a copy of the evidence?

Q. How do you know whether Dr. Wickremasooriya answered that question hypothetically? A. I asked him myself afterwards.

Q. You have discussed the matter with him since? A. Yes.

(Evidence read to the witness—witness looks at a copy which is handed to him). The passage he was discussing is this: “The probabilities are she conceived between the 19th and 27th July. Those would be the more probable dates. In point of fact I suggest it is within the region of possibility that conception took place very near the 11th August. In the absence of the whole menstrual history it is rather difficult to express an opinion here on this point”. Then the Court put the question “Could this child have been conceived on the 17th April. (Witness continues to read the evidence).

Q. “The question then arises as a medical expert could you exclude the possibility of her conceiving owing to an intercourse on the 9th Augustcast away with the menstrual discharge”. What is the hypothetical point in the question? A. It is whether conception could have occurred on the 9th August.

Q. There is nothing hypothetical about it the facts in the particular case were given to him and he was asked if the intercourse was on the 9th August. Could this child have been conceived as a result of it and then to that he gives a certain answer. You said about a point in his evidence which you are in disagreement with, what is your answer to that?

(To Court :

Q. You are in general agreement with Dr. Wickremasooriya’s evidence, is there any point on which you disagree? A. This is the point. The child was conceived on 9-8. He said if the child was conceived on 9-8 it could not have been born on 26-3 with the full signs of maturity that he described).

Q. That is what he said? A. That is what I say.

Q. What did he say? A. He said that conception could have occurred on the 9th August possibly, but the question was not definitely put to him that if she conceived on 9-8 whether the child could have been born on 26-3.

Q. That is a dereliction of duty on the part of Counsel, that is not for you to point out, it is for the Court to point out. But what is the point on which you are in disagreement with him. Has he said anywhere that if a fruitful coitus took place on 9-8 that this child could have been born with all signs of maturity on 26-3? A. He has never said that.

Q. Then you are in agreement with him? A. Yes.

(To Court :

Q. You say there is some ambiguity in his evidence? Yes, that is what I think.)

No. 80
Defendant's
Evidence
Dr. N. Atty-
galle Cross-
examination
—continued.

Q. So what you say is this, that if there was a fruitful coitus on 9-8 it is not possible for this child to have been born with the features observed by Dr. Wickremasooriya on 26-3? **A.** I am not basing my opinion on the features only but on the general observations he made during the pregnancy period.

Q. Taking all the factors into consideration that child could not have been born on 26-3 with the signs he described. Apart from those observations of Dr. Wickremasooriya on the day he was born what are the other factors he took into consideration? **A.** Dr. Wickremasooriya has stated in his evidence that he examined this patient before 10 and he said the uterus had enlarged up to a certain point and then he said that he heard foetal heart sounds on the second occasion. He gave the dates of his examination. He said that the uterus was four-finger breadths above the symphysis pubes. If the conception took place on 9-8 from 9-8 to 23-10 the number of days would be 75, that would be 10 weeks and five days. I say it is impossible that in the case of a child conceived on 9-8 for the uterus to have reached up to four-finger breadths above the symphysis pubes on 23-10. Then he said that on 17-12-41 he heard foetal heart sounds. The foetal heart sounds are audible on the 24th week. When you count from 9-8 it is 18 weeks and four days, and I say that is 20 another impossibility. Very rarely it may be possible, but with regard to that other point of his it is absolutely impossible. You must take all the factors together, you cannot go on one of them. Then he stated that this child was born on 26-8 with full signs of maturity which he described. All these factors taken together makes it impossible.

Q. When Dr. Wickremasooriya or you say that a child is in the 3rd month or 6th month from what date do you calculate in your profession? **A.** The first date of the last menstrual period.

Q. So that when Dr. Wickremasooriya or any doctor said that the child was in the third month and described that the uterus was four-finger 30 breadths above the symphysis pubes what was meant was that the child was three months calculated from the last menstrual date? **A.** No. Three months of the first date of the last menstrual period.

(To Court :

Q. Supposing it is a fact that in November, 1941, Dr. Wickremasooriya had told Mr. Alles that his wife was pregnant five months or that she was in the 5th month of pregnancy up to what date would that be? Somewhere about the end of November would be consistent with your view? **A.** Yes.)

Q. So that if Mrs. Alles had her last menstrual period on 12-7 and 40 then on 23-10 she was examined by Dr. Wickremasooriya would he be right in saying that she was in the 3rd month? **A.** That would be so.

Q. If on the 15th, 22nd or 29th November he said she was in the 5th month that also would be correct calculated from the 12th July? **A.** I have got to give an explanation to the first part of that question and also with regard to the 2nd part of it.

Q. You must answer it? A. I cannot answer yes or no to that question without an explanation.

Q. Now the fact of the uterus being four-finger breadths above the symphysis pubes is it consistent or inconsistent with the fact that she was three months? A. It is not consistent with the fact that her last menstrual period was on 12-7 because of the view that the four-finger breadths above the symphysis pubes does not accord with this finding.

Q. What finding? A. That the last menstrual period was on 12-7.

10 Q. Was she in the 3rd month? A. She was in the 3rd month.

Q. She would be between the 4th and 5th? A. If the uterus was four-finger breadths above the pubes it is not consistent.

Q. With what? A. With the 14th week. I have calculated it from 12-7 and it comes to the 14th week. 12-7 to 23-10 is 103 days, that is 14 weeks.

Q. One month or four weeks up to 12-7. 12-7 to September will be another month and another month up to 12-10. Then she is in the 13th week? A. 14th week.

Q. 14th to 15th week? A. Yes.

20 Q. You say then that the uterus could not be enlarged to that extent?
A. No.

Q. What is the ordinary length of four fingers? Measure Dr. Wickremasooriya's fingers.

(To Court :

Q. You mean each doctor has got his own measure? A. Practically.)

(Dr. Wickremasooriya's evidence put to witness.)

30 Q. That is calculated from the last menstrual period given by the patient. Cannot the uterus be four-finger breadths above the symphysis pubes between the 14th and 16th week? A. You measure any woman's abdomen it would be different.

Q. How many inches would that be above the symphysis pubes, independent of what Dr. Wickremasooriya told us can you say? A. I cannot.

Q. Is the four-finger breadths the standard method of measurement?
A. No.

Q. In inches how far would the uterus be? A. I did not calculate it in inches.

40 Q. Will you please tell me if you do not know the breadth of Dr. Wickremasooriya's fingers how do you know it is wrong? A. Because the minimum of four-finger breadths above the symphysis pubes would be three inches. I mean that anyone's minimum would be three inches.

No. 30
Defendant's
Evidence
Dr. N. Atty-
galle Cross-
examination
—continued.

Q. Cannot a uterus which is in the 14th to 16th week be three inches above the symphysis pubes? A. It can be more under abnormal conditions.

Q. It can be three inches also? It can be so or more under abnormal conditions.

Q. What are the abnormal conditions? A. Twins. Excessive Mybiambriose, mole formations.

Q. Therefore the height of the fungus is not reliable? A. It is reliable in normal cases.

(To Court :

10

Q. And it is not sufficient as a single item to found an impression? A. No.)

Q. Tell me without any regard to abnormalities, normally what is the height of the fungus? A. I cannot. It varies.

Q. Do not different woman's abdomens vary? A. To a certain extent.

Q. Normally you cannot say? A. Your question was this, that the fungus would be in the 14th to 16th week.

Q. In the 14th to 16th week then what would be the measurement above the pubes in inches? A. I cannot say.

20

Q. Can you say in any other way? A. I divide it into three sectors 12th week one sector, in the 16th week another sector and so on.

Q. Can you give us the length of a sector? A. I am not telling you the exact length I am giving you the method used for my guidance.

Q. The second factor that you gave was the statement made by Dr. Wickremasooriya that he heard the foetal heart sounds when he examined the patient on 17-12 and you say that could not be correct? A. I do not dispute that at all.

Q. Do you dispute that he heard the foetal heart beats on 17-12? A. No.

30

Q. What you said was this if the child was conceived on 9-8 Dr. Wickremasooriya could not have heard the foetal heart sounds? A. Yes I said not likely.

Q. When are the foetal heart sounds usually heard? A. About the 5th month.

(To Court :

Q. That is with the stethoscope? A. Yes.)

Q. I think you said earlier 6 months? A. 5th calendar month or 6th lunar month. I think I definitely said 24 weeks.

Q. The lunar months and calendar months are calculated from the last menstrual date, and if it was on 12-7 then the foetal heart sounds could have been heard on 17-12? A. Probably.

40

Q. That is consistent with Dr. Wickremasooriya's evidence here?
 A. Yes.

Q. Now we come to this question. You say if the fruitful coitus was on 9-8 the boy could not be born on 26-3 as a mature child for all practical purposes?
 A. With the description that Dr. Wickremasooriya gave, I say it is impossible.

Q. It is in the last two months of gestation that a child develops rapidly, progressively and fully? (Counsel reads page 47 of Taylor, vol. 2).

A. I agree with this passage entirely.

10 (Witness reads through the whole passage). I agree with that whole paragraph.

Q. What are the last two months of gestation?
 A. 8th and 9th month, that is in calendar months. In lunar months 9th and 10th. The calendar months and lunar months are calculated from the first day of the last menstrual period.

Q. Can you say without very close observation the difference between a child born in the 8th calendar month or the 9th calendar month?
 A. No.

Q. Can you without close physical observation tell us the difference
 20 between a child born on the 8th calendar month or the 9th lunar month and the 9th calendar month or 10th lunar month?
 A. Yes. We put it the other way.

Q. I will have it my own way?
 A. You want to know between the 9th calendar month and the 8th calendar month is that correct?

Q. The first part, yes?
 A. Yes I agree, it is difficult to say without close observation.

(To Court :

Q. 7th month?
 A. Very easily.)

(Counsel reads the next sentence in Taylor " It is difficult.....born
 30 on the 9th month ".
 A. I agree with that.

Q. If Mrs. Alles' first date of her last menstrual period was 12-7 and the child was born on 26-3 in calendar months and lunar months how many calendar months and lunar months are there between those two dates?
 A. 257 days. (Witness makes the calculation in Court).

Q. That reduced to calendar months comes to 8 months and 17 days. The child would be between the 8th and 9th month in calendar months?
 A. 8 calendar months and 7 days.

Q. How do you get that?
 A. I worked it out.

Q. Are you doing this calculation for the first time in Court?
 40 Yes, why should I. A.

Q. Now in lunar months?
 A. 9 months and 5 days.

(To Court :

Q. Did you hear this date 12-7 before this?
 A. No. That date was never given to me.)

No. 30
Defendant's
Evidence
Dr. N. Atty-
galle Cross-
examination
—continued.

Q. You heard Dr. Wickremasooriya say that the date was 9th to the 14th ?

(Mr. Wickremanayake says that is not the evidence.)

Q. 11th to the 14th was the date given ? A. Yes.

Q. You heard that when Dr. Wickremasooriya gave evidence in mid December ? A. Yes.

Q. Since you heard that evidence you had no reason to make this calculation ? A. No.

Q. Well as a matter of fact the child was in the 8th calendar month and the 10th lunar month, how is it possible for any one to say that this child.....? A. Are you asking me a hypothetical question or is it this case ?

Q. This case, if the first menstrual period was 12-7 the medical opinion would be that this child was necessarily a mature child ? A. Not this child because with regard to this child the earliest possible date of conception was 9-8.

Q. Is that the reason ? A. That is the evidence.

Q. Were you instructed that the earliest possible date on which you could found your figures was the 9th August ? A. That was put by the Court to Dr. Wickremasooriya. 20

Q. Before that you were not aware of that ? A. I was aware.

Q. Now, doctor, if 9-8 was the date of conception between that date and 26-3 how many days are there ? A. 230 days.

Q. When your medical books tell you that the features of a child are these, in the 8th or 9th month, that is of a child whose foetal existence is calculated from the first date of the last menstrual period of the month ? A. What is that ?

(Question repeated). A. No. The child's foetal existence is calculated from the first date merely for the purposes of calculation, the child's existence is not from that date. 30

(To Court :

Q. Assuming this child was procreated on 9-8 and born on 26-3 was it an 8-month child or a 9-month child ? A. 7 calendar months and 15 days.)

Q. Does page 43 of Taylor apply to that case ? A. Not exactly.

Q. So the child was in the 8th month ? A. 8th calendar month.

Q. Or the 9th calendar month ? (Counsel puts page 47 of Taylor to the witness). Is Taylor speaking of lunar months or calendar months there ? A. Calendar months.

Q. Calculated as from the first date of the last menstrual period ? 40
A. The first date of the last menstrual period 8 months or 9 months calculated from the first date of the last menstrual period ? A. Yes,

Q. So that child calculated from 9-8 is in the 8th calendar month?
A. 7 months and 15 days.

Q. Is that not the 8th month? **A.** Yes.

Q. Now would it be correct to compare the characteristics of a child whose age is calculated from a notional period that is from the first date of the last menstrual period, with the characteristics of a child whose date of conception is known? **A.** Yes.

Q. Why? Are you not comparing like with unlike? **A.** Because when you speak of 9 calendar months and 10 lunar months you mean in a normally menstruating woman the gestation period—about 10 days less than the notional date—so that when you describe a child as of 10 lunar months or 9 calendar months you are describing a child with a gestation period of 270 to 275 days.

Q. Should we not reduce these two periods that is the period calculated from the first date of the menstrual period to the date of birth and from the date of fruitful coitus to birth to like terms? **A.** You cannot reduce them.

Q. You have not heard of such a reduction of the same terms? **A.** What do you mean?

Q. Reducing the periods to like terms? **A.** Sometimes they do. Calculations and comparisons are drawn not by mere terms but by taking all these things together.

Q. Here Taylor gives the characteristics of children 8th to 9th months as from the menstrual date? **A.** 8th and 9th month is not a child of 280 days it is a child of 270 days' development.

So that when he describes a child of 7 months in his book it would be about 10 days less than 7 months.

Q. The 8th and 9th month referred to in Taylor are calculated from the last menstrual date? **A.** But when you reduce into terms of development you have to reduce a certain number of days in that case mentioned by Taylor. That is always inferred.

Q. Where is it said so? **A.** That is a fact. The gestation period of a child begins from the first day of the last menstrual period. As every one agrees it starts from the date that conception took place. Now in this case you know the date of insemination and you can fix that date clearly.

Q. It is not stated in any text book? **A.** What is the use of any text books, any man who reads a text book understands it and students are taught that.

Q. Your figures and statistics are based on the last menstrual date?
A. I agree.

Q. If that be so I am asking you to reduce the age of this child in terms of what is the date of the last menstrual period? **A.** You have not told me the exact menstrual date at any time,

No. 30
Defendant's
Evidence
Dr. N. Atty-
galle Cross-
examination
—continued.

Q. 12th July? And the conception took place on the 9th August.

A. Never mind the 9th August. I must know all these things to answer the question.

(To Court :

Q. How many factors are required to answer that question? A. The first date of the last menstrual period, the date of insemination and the date of birth.

Q. All these factors are required? A. Yes and you must know the menstrual cycle of the woman also.

Q. If it is 12-7—18 days, and you had 9 more days she would be 10 menstruating on 9-8).

Q. We know that coitus was on 9-8. Child was born on 26-3 that is 230 days, assuming that the first date of the last menstrual period of the mother was the 12th July will you please give us the age of the child in terms of the first date of the last menstrual period? A. What do you mean, you are not considering the menstrual cycle of this woman.

Q. Answer it? A. I cannot answer it without reference to the menstrual cycle of the woman.

Q. Did you not tell me that the menstrual cycle has no reference whatever to the period of gestation? A. Yes of course. 20

Q. Then if that be so why do you want to ascertain the menstrual cycle? A. I am not prepared to do that without knowing the dates.

Q. Is it not possible if the boy was born on 26-3 and if the coitus was on 9-8? A. Having listened to the evidence of Dr. Wickrema-sooriya and he described a certain child that was delivered on 26-3 with full signs of maturity and he described that he examined this patient twice and he gave descriptions and in addition you provided the date 9-8 and taking all these factors I say it is impossible for this child to be born like that on 26-3 assuming the fruitful coitus was on 9-8.

Q. Can you tell us by giving your opinion if the fruitful coitus was 30 on 9th August, and the child was born on 26-3 assuming the first date of the last menstrual period was 12-7 what was the life of the child that was born calculating from the notional date? A. Are you giving me the exact menstrual cycles in this woman. I cannot answer that question on the data supplied. I want the menstrual cycle of the lady.

Q. Assuming it was a normal menstrual cycle? A. She could not have conceived on that date because she would be menstruating on 9-8.

Q. An irregularly menstruating woman? A. I cannot give an answer to that question. Sometimes when they conceive like that you do not know the date of ovulation if the delivery was in 315 days or 320 40 days after the coitus. You cannot say that if you do not have the regular cycle. I have myself delivered children in 305 days, 315 days and 316 days which are normally developed children which did not show any signs of prematurity so that development is not in proportion to the adding of days to the period the child in the gestation sack.

Q. So in the case of an irregularly menstruating woman the period of gestation is uncertain? **A.** No, that is certain, the period as counted from the menstrual date to the delivery date is uncertain.

No. 30
Defendant's
Evidence
Dr. N. Atty-
galle Cross-
examination
—continued.

Q. Now, doctor, you told us that conception cannot take place if the intercourse takes place a couple of days before the onset of menstruation? **A.** You must be definite that the menstruation is coming on. If it was definitely two days, it is not likely.

Q. Is it impossible? **A.** It is almost impossible.

(To Court :

10 **Q.** Because it would be washed away? **A.** For conception to take place there are certain tissue fluids in the blood which are generated and supplied to the lining membrane of the womb just after ovulation takes place and then if the child is firmly imbedded in the womb this fluid is kept on otherwise it is withdrawn from the system and the ovum is cast out.)

Q. You disagree with Dr. Wickremasooriya when he says that conception can take place on any day of the menstrual period? **A.** I disagree in a normally menstruating woman if he said that. If I remember right he said that he has heard Dr. Theobald mention one such case and
20 in his experience had one which was a doubtful case.

(I ask Counsel to show me the passage. Counsel says he will do so. Counsel says it is on page 353 of the record.)

(Witness states) I entirely disagree with that passage if it is so because I have my own experience to go on.

(Counsel refers to page 354). May I point out the fallacy there, when a woman says the next menstrual period is due if by any chance it is postponed for some reason conception can take place. No woman can definitely say that. A woman says on such and such a date she is likely to menstruate but you cannot definitely say that for many reasons, it may
30 be prolonged.

(To Court :

Q. Various factors affect the question of menstruation? **A.** Yes, for instance excitement. After the bombing there were women who did not menstruate at all, for a number of months.)

(Counsel reads report from the British Medical Journal of 11-1-41). "Cycle regular 5 to 28" that means the flow lasted five days and the cycle was 28 days?

(To Court :

Q. How is the menstrual cycle described among medical men? **A.**
40 It would be 5/28).

(Witness continues). May I point out the fallacy in this passage read to me?

No. 30
Defendant's
Evidence
Dr. N. Atty-
galle Cross-
examination
—continued.

(I raise the question whether a letter written by a doctor to the British Medical Journal is an authority which can be cited in Court. I very much doubt the admissibility of this evidence but let it go in.)

May I point out if I believe every word that is written in the British Medical Journal most of our medical men would go insane and they would be committing murder—I mean by following the treatment given there.

Q. Dr. Wickremasooriya himself says that in his own experience there was a case? **A.** He said a doubtful case.

Q. You seem to be very familiar with his evidence? **A.** I was listening to it. 10

Q. According to you it is impossible? **A.** If the cycle was right—I modify my answer to that extent.

(Reads passage from Theobald). I have heard him and sometimes I have doubted him. I doubt some statements he has made.

(Counsel is now reading the article by Dr. Theobald in the British Medical Journal.

Mr. Wickremanayake objects—living text-book writer. He is living in Ceylon.

Mr. Ameresekere says he was not aware of that.

I uphold the objection. 20

Dr. Theobald is in Hatton.

(Shown Johnstone on Midwifery). This is a well-known text-book on Midwifery? I have not read that particular book. Johnstone is a well known Obstetrician.

Q. And he is dead, is he? **A.** No, he is alive. He is not in Ceylon.

(Reads page 92 of Johnstone). “On the basis of these observations Knauss maintains that coitus can be fertile only if it occurs during the period covering three days before the day of ovulation and one day after it..... Since clinical experience seems to show that conception may occur at any part of the cycle”. Do you agree with that passage? (Witness reads through the passage himself). **A.** Both are correct. I have to give an explanation because if the exact date of ovulation is known according to menstrual cycles then that fixation of the date according to Knauss is right but if some nervous impulse suspends or delays the ovulation period then it upsets the cycle and conception can occur.

Q. You cannot say with certainty at what date of the menstrual period a woman can conceive? **A.** Certain amount of certainty in a normally menstruating woman. You can almost with certainty say that she could conceive on such a date in a normally menstruating woman. 40

Q. What Johnstone says at page 93 is this: “Where the exact time of ovulation can be calculated from accurate knowledge of the dates of

menstrual periods extending over several months in a woman whose periods are regular". Normally menstruating women you say with regular cycles will conceive from the 9th to the 17th day? *A.* Yes.

(Counsel reads up to the words "conception may occur at any part of the cycle"). Does this not say that in the case of a regularly menstruating woman it is not safe to accept that there is a safe period but it is best to hold the view that she can conceive at any date of her cycle is that not what Johnstone says? *A.* It is impossible if it is a regularly ovulating woman.

No. 30
Defendant's
Evidence
Dr. N. Atty-
galle Cross-
examination
--continued.

10 (To Court :

Q. What is the meaning of that last word "cycle" there? *A.* Normally menstruating cycle. If for some psychological reason that cycle has been altered coitus may take place within that cycle and conceive).

Q. You add a further qualification? *A.* Yes.

Q. So you agree with Johnstone only with a reservation? *A.* Yes.

(To Court :

Q. Assume the husband knows the wife's menstruating cycle and they use that as a method of contraception but without their knowing it the wife from some psychological causes has got excited and the cycle is
20 changed, can the coitus take place within the safe period and yet impregnation take place? *A.* Yes it is possible).

Q. According to Ogley and Knauss the 9th to 17th day in a woman who menstruates regularly is supposed to be the most fertile period? *A.* Yes.

Q. Outside that period would be the safe period? *A.* I do not totally agree with all these things.

Q. In other words the 9th to 17th day—outside that period it is safe to have intercourse if you do not wish to have conception? *A.* Subject to what I have already said that would be safe.

30 *Q.* Do you know Dr. Gladys Cox? *A.* I do not consider these people authorities on conception. Norman Hair is not an expert nor an authority. They write books but they are not authorities, I consider only those people authorities who have considered and learnt the subject and then write books at the end of their career.

Q. Are you at the end of your career? No in the middle.

Q. Have you written any books on the subject? *A.* No.

Q. Have you contributed any articles? *A.* Yes on my personal observations to the British Medical Journal and other periodicals.

Q. On this subject? *A.* No, but I have a better knowledge of
40 menstruation than those people have. I lecture in the Medical College on Gynaecology. I do not lecture on obstetrics but I am an examiner in obstetrics. I am a gynaecologist and obstetrics and gynaecology is a combined subject. I am attached to the General Hospital. I do not do obstetrics there but I do it outside in Colombo everyday.

No. 30
Defendant's
Evidence
Dr. N. Atty-
galle Cross-
examination
—continued.

Q. Your knowledge is confined, in obstetrics, to private practice?
A. Yes.

Q. How many women do you deliver a year?
A. 70 private cases.

Q. Dr. Wickremasooriya who is attached to the Lying-in-Home delivers about 10,000 cases?
A. None of them deliver 10,000 they are delivered in the institution by nurses and others and you cannot say that they personally delivered them, except of course a few cases.

Q. But patients are under their direct supervision?
A. Yes, but I contradict the statement that he delivers 10,000 cases a year. There are a large number of doctors in the Lying-in-Home to do the work.

(Reads passage from Cox page 25). "It is impossible to determine in any particular woman.....any absolute safe period.....on all days of the cycle"?
A. Her conclusions are based on certain amount of evidence she has collected or someone has collected for her.....

Q. Do you agree with her conclusions?
A. This is rubbish.

Q. Of course you do not recognise Hair?
A. I do not recognise these people at all on any of these subjects.

(Shown page 59 of Hair from the words "Rightly I think.....insecure").
A. These are popular writers on contraception. They say 20 there is no safe period.

Q. Is this also rubbish?
A. I do not accept these conclusions.

(To Court :

Q. This is a book that prescribes sheaths and pessaries and things like that?
A. Yes.)

(Reads article on Birth Control by G. W. Cosmac, M.B.) Have you heard of the Editor of the American Journal on Obstetrics?
A. I do not know.

Q. He is Cosmic?
A. May be.

(Reads at page 1556, article of 21-10-39). "The safe period..... 30 human nature". I have nothing to say about those things human characteristics and things like that.

(To Court :

Q. From the point of view of contraception it is unsafe to rely on a safe period?
A. I agree.

Q. In other words just to follow up the question put by the Court irrespective of the regularity or irregularity of the menstrual period conception can take place on any date?
A. In the regular cycle conception cannot take place on any date.

Q. Now I come to the case where the date of intercourse was a few 40 days before the onset of menstruation—two days before—L. J. Reports Probate Division, Vol. 108—*Clark vs. Clark* (1939, page 92. In this case the facts are these. On 20-8 the husband and wife had intercourse, there

was some sort of bleeding the following day and the lady conceived and a child was born 174 days after Feb. 10th, 1936, in that case will you please calculate the dates from 20-8 to 10-2, 174 is that correct? *A.* I accept that as correct.

No. 30
Defendant's
Evidence
Dr. N. Atty-
galle Cross-
examination
—continued.

Q. Conceived on 20-8 could a viable child have been born on 10-2?

A. With modern methods and attention you can make the child viable. I mean the child can be made to live.

(To Court :

Q. What I am interested is from 20-8 to 10-2 is how many months?

10 *A.* 174 days—6 months and a few days.

Q. 7th month child? *A.* Yes.)

Q. These are not calendar months, doctor, the child is in the 6th-month? *A.* Yes, under modern methods the child can be brought up.

Q. In this case the doctors gave evidence to say it is not possible that a viable child could be born on the 174th day? *A.* If the doctor said so he is wrong because there are modern methods of making that child live.

(I at this point raise the question whether on a finding of fact in an English Court this witness can be questioned. I ask Counsel to cite
20 authority on this. Counsel says he only wants to ascertain whether certain statements made by the doctor in the English Courts is right or wrong. I allow the question.)

Q. Dr. Cox stated that this child which was 174 days old at the time of birth could not possibly be a viable child? *A.* That is wrong—a wrong conclusion because the child lived. Dr. Cox is not a medical authority in England. He is a gynæcologist. I admit he has got the same Degrees as myself.

Q. He is the Middlesex gynæcologist? *A.* No he is an assistant in the Middlesex hospital.

30 *Q.* He is one of the editors of the British Journal on Obstetrics? *A.* Yes.

Q. Have you had any experience of a 174-day child living? *A.* I have not because we do not have modern methods at our command to make such a child live.

(To Court :

Q. Is it an incubator that is wanted? *A.* Yes, you must keep the child warm and so on.)

Q. Have you any instance of a child of 174 days dying? *A.* There are any amount of children dying, I cannot say the exact dates
40 because I do not have the statistics at my command now but regularly six months' babies, a few days less or more die.

Q. The recognised method of calculation you have told us is to reckon from the first day of the last menstrual period? *A.* Yes.

No. 30
 Defendant's
 Evidence
 Dr. N. Atty-
 galle Cross-
 examination
 —continued.

Q. When you say that a child of 6 months or 7 months cannot or can live you reckon from the date of the last menstrual period, that fact having been fixed? A. Yes.

Q. So that when you say that a particular child is 7 months or 8 months old ordinarily speaking you reckon from the first date of the last menstrual period? A. Yes.

Q. And the months that you refer to are the lunar months. Lunar months or calendar months? A. When I speak of months I prefer to use it in weeks or lunar months.

Q. The point is whether you refer to the months as lunar months or 10 calendar months it is in terms of the notional dates? A. Yes.

Q. In fact all your statistics and your tables are reckoned on that footing? A. Yes.

Q. When you say that a child of 8 months or 9 months bears certain characteristics you mean the child is really less than 9 months? A. Yes.

Q. Medical science and authorities have given us the characteristics of these children reckoned always from the notional date? A. Yes.

Q. In the case of the boy Joseph Richard his notional period of existence is either 10 lunar months or 9 calendar months? A. That 20 assumes the menstrual cycle as 12-7.

Q. You take it from me? A. Yes then it is right.

Q. But if that menstrual date is wrong? A. Then the conclusions are wrong.

Q. So that this boy who was in the 9th calendar month or 10th lunar month will have the same characteristics as a full-term child? A. Any boy born on the 9th or 10th month will have the same characteristics as a full-term child.

Q. As in every boy described in the text books? A. Yes as a full-term child.

30

Q. Now it is a very well known fact that delivery does not always take place on the day that it is expected? A. Yes that is well known — two weeks three weeks sometimes.

Q. Authorities are agreed that delivery may be either protracted or abbreviated? A. Yes.

Q. And there also the text books say may be due to individual variations? A. Yes.

Q. So that a child may be a full-term child though he has not had the full period, 265 to 270 days of intra uterine existence? A. Do you mean that a child if it has had 265 to 270 days spent in the uterine cavity 40 that that child will be a fully developed child? I disagree, it cannot be so.

Q. Instead of having an intra uterine existence of 265 days if the child had such an existence of 240 days you say it would not be a full-term child? A. It would not be a fully developed child having the characteristics as described by Dr. Wickremasooriya.

No. 30
Defendant's
Evidence
Dr. N. Atty-
galle Cross-
examination
—continued.

Q. 250 days? A. About the same. I cannot go on telling you these in detail, at 230 days there will be signs of prematurity and in 250 there will be lesser signs but in 230 they will be obvious.

Q. If the child is born on the 230th day from the 12th July would the child be premature or full term? A. Premature.

10 Q. 240th day? A. Premature.

Q. And will show signs of immaturity? A. Yes.

Q. 250th day? A. Premature.

Q. 260th day? A. Will show signs of prematurity.

Q. Take the 240th day from the notional date what are the signs of prematurity? A. Obvious signs—very small in size, weight will be small, skin will be wrinkled and red and the testicles will not have descended to the scrotum if a male child, the hair would not be long, the child would be covered with down, the nails would be short and there would be there the general signs of immaturity. An expert could say that at
20 once.

Q. On the 250th day? A. There would be signs of prematurity.

Q. Same as 240th? A. A little less.

Now on the 250th day it would be 10 days past the 8th calendar month. Why does Taylor say on page 48 that an 8th month child cannot be distinguished from one born on the 9th month? A. Because it is less obvious.

Q. In other words if born on the 250th day the general opinion is that an 8th month child is not with certainty distinguishable from one born on the 9th month. Then it is hardly to be distinguished from one
30 born on the 270th day? A. It is hard. It is not obvious.

Q. There are no definite criterion laid down in forensic text books in regard to the state of development of the child after the 8th calendar month? A. There are cases described in books. The development in the 8th and 9th calendar months is given but at the end of the 8th month and end of the 9th month they do not give.

Q. Somewhere in between the 240th day and the 270th day the child attains maturity, it becomes a full term child fully developed? A. Why do you say that.

Q. Because that is the end of the 8th month and the other is the
40 normal period? A. At the end of the 9th month the child would have full maturity, not the beginning but at the end of the 9th calendar month.

Q. That is 270th day? A. Yes. I do not know whether 270 days are 9 calendar months.

No. 30
Defendant's
Evidence
Dr. N. Atty-
galle Cross-
examination
—continued.

Q. What do you say? A. 9 calendar months—280 days.

Q. So a child attains full maturity on the 280th day? A. Not always.

Q. What are the exceptions? A. Take the case of a woman who menstruates in irregular cycles, taking the notional date then the child's full maturity is as long as 315 days. You say it can be protracted to 315 days? A. That is the development, because of the irregularity of the cycle maturity does not begin on the notional date but on the date of conception to the date of delivery.

Q. What is the minimum? A. Two weeks less, that is, 266th day.

Q. But whether it is the 266th or the 280th day Taylor's view is at the 8th calendar month or 9th calendar month the general opinion is that a distinction can hardly be made with any certainty? A. Yes.

(To Court :

Q. To distinguish an 8th-month child from a 9th-month child you can if you examine carefully? A. Yes.

Q. For instance, Dr. Wickremasooriya with his qualifications would have been able to say whether it was 8th or 9th month? A. Yes.)

(Reads page 93 of Johnstone) : "Pregnancy followed by the birth of 20 a fully developed child, may be prolonged or abbreviated is an observed fact.....fully developed children have been recorded as being born after gestation as short as 240 days and as long as 313, 320 and even 331 days from the commencement of the last period". Do you agree with that view? A. Yes.

Q. Those dates are calculated from the first day of the last menstrual period? A. I do not consider the notional date in considering the development of the child. You have all along been inferring things—a concrete case from an abstract, that I am not prepared to do.

Q. Is there any person who can say the date of conception? A. 30 No.

Q. Therefore these days, 240, 313, 320 and so on are calculated from the first date of the last menstruation? A. Yes.

Q. In Johnstone the dates they give are calculated as in all text books in that way and when they do not do so they specifically say that? A. If you read that book further you will find he modifies that and comes to another conclusion.

Q. I have read that, are you in agreement with the passage I have read? A. I am not in total agreement.

Q. What part of it? A. When he speaks of menstrual dates I am not in entire agreement.

Q. To what extent would you qualify that? (Witness now says) I agree with the passage marked in blue on that page.

Q. That is the same passage that I read out? A. Yes.

Q. You said that in the case of a woman with a regular cycle her conception takes place invariably or as a rule or always between the 9th and 17th day? A. Invariably, if there is a regular cycle. It cannot take place outside if there is a regular cycle except of course with regard to the one reservation I made about excitement etc. The excitement alters the cycle.

No. 30
Defendant's
Evidence
Dr. N. Atty-
galle Cross-
examination
—continued.

Q. You also said on the last date that there was a well-known authority called Teacher whose view was that a fertilized ovum takes 9 to 10 days to travel? A. Yes to travel and get embedded in the wall of the uterus.

Q. Fertilization inhibits menstruation? A. No.

Q. What happens then while the woman is plugged up? A. Fertilization means the combining of the sperm and ovum after that the fertilized ovum must travel along the fallopian tube. The menstruation does not take place at all after it is embedded because the nourishment is brought from outside to keep the uterine wall nourished.

Q. What inhibits the menstruation? A. Many things. Impulse.

Q. Normally what is the process. After fertilization you say till the embedding takes place it is possible to menstruate? A. Yes and that is the recognised view.

Q. Your statement is that fertilization does not inhibit menstruation? A. No. it must be properly embedded so that the outside covering of the ovum must supply the secretion to maintain the corpus luteum.

Q. When does the corpus luteum begin to activate? A. The corpus luteum is a newly formed gland in the ovum itself. After ovulation takes place tissues are formed in that sack which gives the internal secretion, that is the corpus luteum.

Q. When does the corpus luteum begin to function, is it after fertilization or after the embedding? A. It starts functioning without fertilization or without embedding immediately after ovulation takes place.

Q. When the ova is impregnated it starts functioning and it is called the corpus luteum of menstruation? A. It is known as the corpus luteum. It is not called the corpus luteum of menstruation. There is no such name. It may be used by some writers but it is not a recognised name.

Q. Is there a thing called the corpus luteum of pregnancy? A. That is the same thing, it is not called the corpus luteum of pregnancy.

Q. When there is pregnancy is it known by any other name? A. No, all through it is known as corpus luteum.

Q. It is incorrect to say so then? A. Some people may use any term they like. Before fertilization we call it the corpus luteum of menstruation and after conception the corpus luteum of pregnancy. Alright.

No. 30
 Defendant's
 Evidence
 Dr. N. Atty-
 galle Cross-
 examination
 —continued.

Q. Does not the corpus luteum begin to activate after fertilization in a particular way? **A.** The corpus luteum begins to function a few days after the ovulation irrespective of whether fertilization has taken place or not. The corpus luteum passes on a secretion into the system what is called the progesterone and that goes to nourish the lining of the membrane of the uterine cavity getting ready for the ovum to get embedded. In spite of that if the ova is carried away the corpus luteum perishes. Though the ova gets fertilized it does not affect the corpus luteum. It must come along the tube and get embedded in the uterine wall. There is a pituitary like substance which keeps the corpus luteum going on. The corpus luteum functions after that for a number of months and then the placenta itself takes up the function from which the child is fed.

Q. Then Teachers is a text book. It is a well known text book. (Reads from page 8). "If pregnancy occurs the corpus luteum persists.....and plays a part in the embedding of the fertilized ovum!" **A.** I do not agree.

Q. What I say is this after the fertilization the corpus luteum becomes the corpus luteum of pregnancy and begins to activate under the stimulus of the fertilization? **A.** That is wrong for fertilization cannot take place when it is travelling down the tube it takes place only after it is embedded in the uterine wall.

(Shown book by Eaden and Holland). This is a well known text book. (Reads page 11) "If however the ovum becomes fertilized..... pregnancy". That is an understatement because when fertilization takes place the corpus luteum is functioning at the time and if sufficient time does not elapse between the fertilization and embedding then the corpus luteum retrogresses and perishes but if embedding takes place then the stimulus is supplied by the embedded ova for the corpus luteum to maintain and continue nourishment. My point is this the words are "If however the ovum becomes fertilized.....pregnancy". My point is this what this book says is the inhibition of the menstrual period is the result of the activity of the corpus luteum not the embedding of the ovum? **A.** No. Fertilization does not inhibit menstruation. I do not disagree with him, I go further and state that fertilization does not inhibit menstruation. After fertilization the embedding takes place before the corpus luteum starts retrogressing then the stimulus is given by the embedded ovum and then the pregnancy comes on. If the ovum does not get embedded within the particular period then the corpus luteum degenerates or retrogresses.

40

Q. In order that the pregnancy may become complete the process that you describe is absolutely necessary. My point is that before the corpus luteum continues to activate is not the activity stimulated by the fertilization of the ovum? **A.** No, it must produce the internal secretion which is absorbed into the system when it is travelling in the tube it is not absorbed. As soon as ovulation takes place the corpus luteum

is formed in a few days and that continues to function for a number of days and provides the secretion to nourish the lining membrane of the uterus.

Luncheon interval.

Sgd. R. F. DIAS,
D. J.

No. 30
Defendant's
Evidence
Dr. N. Atty-
galle Cross-
examination
—continued.

13th February, 1943.

DR. NICHOLAS ATTYGALLE.

Further cross-examination.

10 (Page 46 of Johnstone put to witness). You agree with that? A. I agree with the passage that has been read to me—(the first sentence).

Further passage put to witness. A. I do not agree with No. 2. I have to modify that by saying proliferative plus secretory phase.

Further passage put to witness. A. That is right.

A (1) put to witness. A. Yes.

A (2) put to witness. A. Yes.

(3) put to witness. A. Yes.

B (1), (2), (3) put to witness. A. Yes. That passage you can only prolong it for a certain number of days.

20 (Counsel now put to the witness the passage B at page 47 marked in red.) A. I agree with that as to the inhibition of the menstruation but our original argument about embedding stands. Fertilization inhibits menstruation. That is right. It inhibits menstruation. Fertilization itself does not inhibit menstruation and if it gets embedded it keeps the corpus luteum going. Embedding must go on for the continuation of the thing otherwise the lifetime of the corpus luteum of the embedded ovum must supply the stimulus for the corpus luteum to be maintained. Your fertilized ovum provides the stimulant. Embedding is necessary. In order to stop menstruation fertilization is not enough the ovum must
30 also become embedded. There is nothing contradictory of what I said in the book—we are only disagreed with the interpretation.

I do not agree with that *in toto* but I agree with every word with this modification the fertilized ovum must be embedded in the uterine cavity to inhibit menstruation. The fertilized ovum after fertilization inhibits menstruation by the fertilized ovum getting embedded in the uterine walls.

Q. The fertilized ovum takes 8 to 10 days to get embedded? A. Yes. It varies to a certain extent.

Q. The moment fertilization takes place inhibition.....? A. He
40 does not say that. He says fertilization is the only factor which inhibits menstruation but there is nothing in conflict with what I say.

Q. Does Johnstone anywhere say that menstruation is not inhibited till the embedding of the ovum takes place? A. No.

No. 30
 Defendant's
 Evidence
 Dr. N. Atty-
 galle Cross-
 examination
 —continued.

(Witness asks for the book to refresh his memory. Witness reads the passage and says the passage immediately below throws light on the situation. “ If the ovum becomes fertilized menstruation does not occur. The explanation must lie in the fertilized ovum as it is the only new factor in the situation ”, but Johnstone goes on to say “ One of the most remarkable discoveries in regard to the sex hormones was the demonstration by Ascheim and Zondek that from an early stage in pregnancy the urine of a woman contains large quantities of hormones which have almost identically the same properties as the gonadotrophic hormone or hormones of the anterior pituitary. This fact is the basis of the well known Ascheim-10 Zondek reaction or diagnostic test for pregnancy. Ascheim and Zondek thought that they were two distinct hormones to which they gave the names of Prolan A and Prolan B. The former was believed to be identical with the follicle-stimulating hormone of the anterior pituitary, and the latter with the luteinising hormone. Later observations suggest that there is only one gonadotrophic hormone in the urine and that it differs from the gonadotrophic hormone derived from the anterior pituitary lobe in that its effect is predominantly luteinising irrespective of dosage. It is now accepted that the gonadotrophic hormone found in pregnancy urine must be produced by the chorionic epithelium of the young ovum ; and as the 20 placenta grows and epithelium increases in quantity the production of this hormone becomes enormous. Its functions are obviously to prevent the breaking down of the endometrium which would otherwise follow if the reciprocal action between the ovary and the anterior pituitary were to take place, in other words to prevent the occurrence of menstruation ”. He explains not the fertilization alone but it must develop a chorionic epithelium. That is the secretion that causes the suppression of the menstruation. That is after the embedding.

Q. According to you immediately after fertilization there is no inhibition of the menstruation? A. There is no need. 30

Q. Immediately after fertilization unless the corpus luteum was undergoing retrogression so that immediately after fertilization the corpus luteum undergoes retrogression it normally functions for 12 days. After fertilization the fertilized ovum comes down the fallopian tube and gets embedded in the endometrium? A. Yes.

Q. I do not deny that in order that the corpus luteum may continue to function embedding is necessary but I do ask you whether on the authorities I have cited to you it is clear that immediately after fertilization menstruation is inhibited? A. No. He does not say that at all. He only says the fertilization inhibits menstruation and the cause of the 40 inhibition is the ovum. The factor is to be sought in the fertilized ovum.

Q. The ovum gets fertilized about 10 or 12 days before the embedding? A. Yes.

Q. That factor persists? A. What factor.

Q. The embedding according to you must take place about two days at least before the date of menstruation? A. Yes.

Q. The time the fertilized ovum takes to travel down the fallopian tube is 9 to 10 days? A. It may be less. That includes the time for embedding to travel through the fallopian tube and get embedded.

Q. And that must be at least two days before the menstruation? A. Yes.

Q. So that in order that there may be pregnancy there must be intercourse about 11 to 12 days before the date of menstruation? A. In a normal cycle about 12 days.

Q. Therefore according to you intercourse within the last 8 days or last 10 days cannot produce any conception? A. Not in a normal cycle.

Q. You say the most fertile period will be the 9 to 17th day? A. Yes.

Q. Can a woman conceive owing to an intercourse between the 9th to the 17th day? A. Yes. If she has intercourse two days before the ninth day the sperm is living and she can fertilize the ovum.

Q. The first seven days will be infertile? A. Yes, in a normal cycle not subject to impulses and stimulation.

Q. The last ten days also she would be infertile? A. Yes.

20 Q. Really the fertile days is the mid period? A. Yes.

Q. In your experience as a gynæcologist and obstetrician in private practice have you not come across cases where conception has taken place in the case of a woman with a normal cycle where the woman has conceived after an intercourse during the infertile period? A. One act of intercourse? Yes? For that a woman must have only one act of intercourse. Most married women have more than one act of intercourse. In my experience a normally menstruating woman it is unknown.

30 Q. How is it known to you that they had coitus within the 9th to 17th day? A. I do not enquire from regularly married women on what day they have intercourse. I do not think that any other obstetrician asks. They do not ask the date the woman had coitus.

Q. In other words you have not done and those of whom you have had discussions with have not done special work on the subject to ascertain whether conception could take place after coitus between the first seven days or within the last eight days or within the mid period? A. No. Except from those people who get married on a certain date after the menstruation and they say they got married on a certain date. We have observations. We have only the first date of coitus but we do not ask them the other dates, they had coitus. It is usual to find out 40 whether a woman has a regular cycle but not whether they have regular coitus.

Q. In other words you have not kept statistics yourself? A. No. I get the information from text books and the menstrual cycle of women. The menstrual cycle guides me in certain things. I have the normal menstrual cycle of a woman in other cases the gestation period comes on.

No. 30
Defendant's
Evidence
Dr. N. Atty-
galle Cross-
examination
—continued.

Then there are cases where menstruation comes once in two months or three months. They come to 350 or 360 days. Then there are those who get impregnated during a period in which they are not menstruating at a time after childbirth. Then we are guided by the date at which the people have had coitus and other things.

Q. About the period of cohabitation or date of intercourse or date of fruitful coitus are you speaking from your personal experience? *A.* Partly personal experience and partly from theoretical knowledge. You ask me a specific question. I do not ask the date of coitus except in the case of those who have an abnormal menstrual history and also in the case where they say they got married on a certain date in the case of the first childbirth.

Q. When a woman comes to you you have occasion sometimes to enquire about her menstrual history? *A.* Always.

Q. In any of those cases you do not know when conception took place because you do not know the date of coitus? *A.* No. Except in certain cases which I mentioned to you. That is where they have had coitus before or after marriage where they have conceived.....

Q. They are very few and rare cases? *A.* They are the type we get.

Q. You have only 70 or 80 cases each year? *A.* Yes—obstetrical cases; others come for diagnostic purposes; others are for confinements.

Q. We have been speaking about women with normal cycles. I want to ask you about women with irregular cycles. What do you understand by women with irregular cycles? *A.* I do not understand anything by that.

Q. What is the opposite of a regular cycle? *A.* Irregular cycles are these: The women who menstruate during the mid menstrual period or 15 days after the first menstruation—they have slight bleeding. There are others who have cycles without any ovulation taking place. They menstruate once in 3 or 4 months. Then there is another type of irregularity they may not have menstruation 2 or 3 months and then they may have regular menstruation with ovulation.

Q. Suppose a woman had a 23-day cycle or a 30-day cycle or a 35-day cycle or 40-day cycle would you call that regular or irregular? *A.* Is it the same woman?

Q. The same woman? *A.* There are no such women.

Q. You have never heard of them? *A.* No. I have never heard of them even in literature. That is in the way you put it.

Q. Never heard of them at all in your experience as an obstetrician or gynæcologist? *A.* No.

Q. The medical journal of Obstetrics and Gynæcology is a well-known magazine? *A.* Yes,

Q. Dr. Fluman is a well known authority on the subject of menstrual cycles? A. Yes.

Q. He is one of the world's greatest authorities on the subject? A. No. He is an authority but not the world's greatest authority.

Page 73 of the journal of Obstetrics and Gynæcology put to witness.

A. I agree with that.

Further passage put to witness. A. Yes.

Further passage put to witness. Page 74 put to witness. A. Cycles were regular and from 26 to 31 days.

10 (I ask Counsel to point out to the table which he is reading where he finds that the same woman was irregular month after month.

He refers to table 1 at page 75 group B 3. Refers to woman No. 66.)

(Witness reads through the article very carefully.)

Q. This journal and the British Medical Journal are the greatest journals on Obstetrics and Gynæcology in the world? A. Yes.

Q. And the contributors to these two journals are men who are in the front rank of their profession and great authorities? A. Yes.

Q. Of course what Fluman has discovered and stated in his article you in your experience have never heard of or read of? A. Yes.

20 Q. In the last paragraph you find that No. 66, 17, 12, 14, 31, 68, 11 and the woman is 18 years old. In these cases of young women whether they have menstrual cycles or irregular bleedings no one can say unless Fluman scraped the uterine endometriym and examined or examined the quantity of preganandoil in the urine. Otherwise he cannot say, whether they are normal menstruation or pseudo-bleeding cycles—no one can say. They are women all under 25. In the case of young women their cycles are irregular and some of them bleeding without ovulation taking place. You can't say whether these women normally menstruate or not. It must have been obvious to Fluman if he knew his job at all that these
30 are cases.....? A. He does not back his statement by the statement that he has done so.

Q. Fluman has wrongly taken those for menstrual cycles? A. That is entirely so.

Q. He says the very question you raise that you must do some scraping or treatment of some kind Fluman condemns himself and says that is not a thing you should do? A. May I read the passage.

(Counsel reads the passage.)

XXN by MR. DAVID : Nil.

Re-examination.

40 Q. Quite apart from the fact that there was no scraping in the case of young girls is there a greater tendency to irregular menstruation? A. For a number of years from the time young girls attain puberty they have cycles of bleedings which do not follow normal ovulation.

No. 30
Defendant's
Evidence
Dr. N. Atty-
galle Re-
examination
—continued.

Q. What do you mean by young girl? **A.** A young girl is a girl immediately after puberty till about 25.

Q. You were asked how many cases you had a year suggesting that your obstetric practice was not much? Your qualifications are F.R.C.S. (England)? **A.** Yes.

Q. The special subjects were? **A.** Surgery.

Q. Whose degrees are better your or Dr. Wickremasooriya's? **A.** I cannot answer that question.

Q. Dr. Wickremasooriya is F. R. C. S. (Edinburgh)? **A.** Yes.

Q. You are also F.R.C.O.G.? **A.** Yes. I passed that examina- 10
tion. The F.R.C.O.G. was conferred on me. M.R.C.O.G. was an exami-
nation. I am the only man in the Island who has passed it. F.R.C.O.G.
was conferred on us all.

Q. That is a recognition by that College of you as an expert in that line? **A.** Yes. Experts are given the Fellowship and ordinary practitioners are given the diploma.

Q. You had 70 cases a year obstetric cases? **A.** Yes, 70 cases that I conduct myself but for diagnostic purposes my cases are many more.

Q. You are the visiting gynæcologist of the General Hospital for how long? **A.** 8 years. 20

Q. In the text books and in the tables for calculating dates you say the period of gestation is given as 280 days it is from the last date of the menstrual period? **A.** Yes.

Q. But conception never takes place on the last date of the menstrual period? **A.** No.

Q. Is that why you have given the period of gestation normally as 265 to 270 days? **A.** Yes.

Q. Making allowance for the notional period? **A.** Yes.

Q. Because the ovulation takes place between the 9th and the 17th days? **A.** Yes. 30

Q. The child itself has had an intra uterine life? **A.** Yes.

Q. Prior to the actual conception can there be any development at all? **A.** None whatsoever.

Q. When you know the actual date of coitus how will you calculate the number of days for the gestation? **A.** Roughly one or two days difference from the date of the insemination date.

Q. That will give you the period the child will live and grow? **A.** Yes.

Q. Can the addition of a notional period add to the development of the child? **A.** No. 40

Q. You have told us the facts being given to you that the child was born on the 26th March? **A.** Yes.

(To Court :

Q. Each one of these factors which you have been examined and cross-examined by itself is inconclusive? A. Absolutely.

Q. But are we in a better position with all the facts to form an opinion? A. Yes.)

Q. Even on the question of the development of the child in regard to maturity and prematurity can you by any one sign say whether the child is mature or premature? A. No one attempts that.

Q. We have the date of delivery of this child as the 26th March of one year. The only possible date of coitus between the parties was the 9th August of the previous year? A. Yes.

Q. You heard Dr. Wickremasooriya's evidence that the child was born fully developed with the skin smooth, good growth of hair, cried lustily, sucked vigorously, etc. Is it your opinion that the child could not have been conceived on the 9th August? A. Absolutely impossible.

(To Court :

Q. Assuming for purposes of argument that this child was conceived somewhere in June could this lady have had a bloody discharge on the 12th July? A. Possible.

Q. What was that due to? A. There may have been a threatened abortion.

Q. Did you know this lady had at her previous pregnancy bleeding? A. Probably that was also a threatened abortion.

Q. It is not impossible for her to have had some discharge on the 12th July? A. No.

Q. Is that menses? A. No.)

Q. You were referred to Cox and Haire? They are both publications on contraceptives? A. Yes.

Q. You say that none of them are authorities on obstetrics or gynaecology? A. No.

Q. As a matter of fact their degrees are not clearly set out? Johnstone page 93 was put to you—the word used is gestation? A. Yes.

Q. That is from the date of conception to the date of delivery? A. Yes.

Q. You refer to Taylor at page 48 : " The important question arises to support such an assumption ". The earlier passage of Taylor was put to you about children of 8 months and 9 months? The 8th month and 9th month do they refer to the beginning or end of the month?

A. One is the completion of the eighth month and the other is the beginning of the 9th month.

No. 30
Defendant's
Evidence
Dr. N. Atty-
galle Re-
examination
—continued.

Sgd. R. F. DIAS,
D. J.

DR. S. L. NAVARATNAM, sworn, F.R.C.S. (Edinburgh), F.R.C.O.G. (England) besides the other qualifications.

I am Lecturer in Midwifery in the University of Ceylon and I was Superintendent of the Lying-in-Home till two years ago. I am now senior Visiting Obstetrician, Lying-in-Home, Dr. Wickremasooriya being one of the other obstetricians.

Q. How long were you Superintendent of the Lying-in-Home? A. Ten years from 1930 to 1940.

Q. Prior to that too you were in the Lying-in-Home? A. Yes, when Dr. H. M. Peries was the Superintendent. 10

Q. I think your experience is the largest amongst obstetricians in Ceylon? A. Yes.

I have been listening to the evidence given by Dr. Attygalle today. I was seated in Court.

Q. What is the normal period of gestation of a child in the uterine from the date of conception to the date of delivery? A. From the date of conception to the date of delivery is about 265 to 270 days.

Q. Generally it is not possible to know the date of coitus—how do you generally work out in the cases of the ladies who come to you? A. In a woman who has a normal monthly cycle we count from the last date 20 of her menstrual cycle.

Q. How many days do you count? A. 280 days.

Q. Why that allowance? A. Because the occurrence of ovulation is about 14 to 15 days before the next monthly period, we allow those two weeks.

Q. Do you agree with the view expressed by Dr. Attygalle that in the normal cycle ovulation takes place between the 9th and 17th day? A. Yes.

Q. And that conception generally takes place in a normal case only somewhere about that period of ovulation? A. Yes. 30

Q. Is it in your opinion possible for fertilization to take place and pregnancy to occur as a result of coitus a day or two before the onset of the next menstrual period? A. If menstruation was actually coming two days after that I do not think conception and embedding can take place.

Q. Why? A. Because the state of the mucous membrane would be such that within two days the membrane will break down and menstruation will occur. Besides at that period the ovum would probably be dead and the ovum passed at the normal ovulation period would be dead long before that act of coitus. 40

Q. So that in a normal person it is not possible for pregnancy to occur as a result of coitus so late? A. Yes.

Q. It is in evidence that Dr. Wickremasooriya delivered a child on the 26th of March last year? A. Yes.

Dr. Wickremasooriya has told us that the child was a mature child fully developed and full term. He has described the child to us as 6½ lbs. in weight having a smooth skin, sub-cutaneous fat, testicles descended to the scrotum, good growth of hair, finger nails extended beyond the fingers and the child cried lustily? *A.* Yes, that is the sign of a fully developed child.

No. 30
Defendant's
Evidence
Dr. Nava-
ratnam
examination
—continued.

Q. That child was delivered on the 26th March? *A.* Yes.

Q. Is it possible for that child to have been conceived on the 9th August? *A.* No.

10 *Q.* You are definite about that? *A.* Yes.

Q. Generally a full term child delivered on 26th March at what period would you place its conception? *A.* Somewhere about the 19th June.

Q. And you will have to allow certain dates this way and that? *A.* One or two weeks this way and that way.

Q. Dr. Wickremasooriya has also told us that he saw the mother on the 23rd October and on that date he found the height of the uterus to be four finger breadths above the junction of the pubic bones and he says that on that he considered the child was about 15 weeks? *A.* 15 or 16 weeks. I agree with that.

Q. How far back will take you to the date of conception? *A.* 1st to 19th July.

Q. It cannot be the 9th August? *A.* No.

Q. He also saw the mother in December that was 17th December and at that time he said he heard the foetal heart beat and he put it down to 23 to 24 weeks? You agree with that that foetal heart beats are heard about the 23rd week? *A.* Any time after the 20th week.

Q. Dr. Wickremasooriya put it down to 23 weeks? *A.* Yes.

Q. You say it was not possible for this child with that degree of development to have been conceived on the 9th August? *A.* No.

XXD by MR. AMERASEKERA.

Q. When Dr. Wickremasooriya says that the child was 23 weeks on the 17th December he means 23 weeks calculating from the last menstrual date? How is he calculating it? *A.* From the degree of development of the child.

No. 30
Defendant's
Evidence
Dr. Nava-
ratnam
Cross-
examination

(Counsel objects. Witness cannot say what Dr. Wickremasooriya meant.)

Q. Assuming that the first date of the last menstruation was given to Dr. Wickremasooriya as the 12th July that estimation of Dr. Wickremasooriya's that the foetus was 23 weeks old will be correct? *A.* Yes about 22 or 23 weeks.

Q. So that you find by the estimation of the growth of the foetus and by a consideration of the first date of the last menstruation given by the patient he comes apparently to the same conclusion? *A.* Yes.

No. 30
Defendant's
Evidence
Dr. Navar-
ratnam
Cross-
examination
—continued.

Q. If as a matter of fact she menstruated on the 12th July she could not have conceived earlier? A. If she had menstruated, yes.

Q. Dr. Wickremasooriya says that he saw the patient some time about the 15th to 22nd November. The first defendant tells us that Dr. Wickremasooriya stated that his wife was in the fifth month of pregnancy? That would be correct if the last date of menstruation was on the 12th July apart of course from any examination he may have made? A. Yes.

Q. Whether it is the 15th or 22nd she would have been in the fifth month? A. Yes. 10

Q. If the plaintiff menstruated on the 12th July her conception must take place between that date and the next menstrual date? A. Yes.

(To Court :

Q. If the husband was not here how would the conception take place? A. Assuming the coitus was there.)

Q. On the 23rd October Dr. Wickremasooriya examined the plaintiff and said that in the third month of her pregnancy the uterus was four finger breadths above the junction of the pubic bones? A. Yes.

Q. Would that lead you to the conclusion that she was in the third 20 month on the 23rd October. About the 16th week of pregnancy. Between the 14th and 16th week? A. Roughly the 16th week. That would be towards the end of the fourth month.

Q. Four finger breadths would be how much in inches? A. About 2½ to 3".

Q. Is four-finger breadths a well-known medical term? A. Yes. It does not vary very much. It is not all authorities who go by inches.

Q. As a matter of fact medico legal experts give always the length in inches? A. Yes.

Q. I refer you to Dr. Sydney Smith (1940 edition) on Forensic Medi- 30 cine at page 335. "The size of the uterus varies.....in the fourth month 4 to 5 inches"? A. Is he talking of lunar or calendar months. I believe these are calendar months (witness after looking at the book).

Q. I want the length above the pubes? A. This would be about 3 inches above the symphysis pubes.

Q. 3" above the pubes would be consistent with the pregnancy? A. At the end of four calendar months. He is always talking of the end of the month.

Q. Of course there are again individual variations? The girth is not the same in the case of all ladies? A. But there are certain 40 definite conditions whereby the size could be given, such as in the case of (.....) the liquid in the uterus. The first time you hear the foetal heart

beats after the 20th week but there are again variations if there is a lot of fluid or if the lady is fat you may not hear but in favourable circumstances you may hear.

Q. Dr. Wickremasooriya said when he examined on the 17th December the foetus was about 23 weeks—according to him the foetal heart sounds could certainly have been heard? A. Yes.

Q. That must be any time after the 20th week? A. Yes.

Q. I am questioning you now on the footing that the patient is one with a normal cycle that is a cycle of 28 days; when I am referring to a person with an irregular cycle I will tell you so. May I ask you straight-away the question. Is it impossible for a woman with a normal cycle to conceive outside the 9th to the 17th day which you have been referring to in your evidence? A. I think it is impossible.

Q. In your experience as an obstetrician in the Lying-in-Home for 17 years and in all your experience as a medical man you have never come across one case where a person has conceived outside the 9th to the 17th day? A. No authentic instances have been known.

Q. In your experience have you come across? A. There may be cases where a person has conceived in the non-fertile period but there is nothing to prove that the menstrual cycle would have been 28 days.

Q. You ought to know the date of ovulation the date of the next menstruation? A. There may be cases where patients may have conceived in the non-fertile period.

Q. So that you cannot deny the possibility of conception outside the 9th to the 17th day? A. Not if ovulation occurs.....

Q. How do you know that? A. If a person had a normal regular monthly periods these are the dates on which she would have conceived not on the other dates.

Q. 9th to 17th days is the maximum fertility period? A. Yes.

Q. But would you exclude the possibility of conceiving outside the 9th to 17th days? A. Further towards the end of the monthly cycle it is not possible.

Q. Please do not think of any particular case; please answer my questions generally. Would you exclude the possibility altogether of a conception outside the 9th to 17th day? A. Yes.

Q. Therefore if ovulation can take place.....? A. Not in the normal cycle. In the normal monthly cycle ovulation takes place 14 or 15 days before the next monthly period. If conception were to occur at a later date it means that ovulation has taken place at a later date outside the 9th to 17th period, and after that the monthly period will not be the normal regular monthly cycle.

Q. Therefore in the case of a normal menstruating person can you be sure of what is called the safe period? A. Yes.

Q. That is a period during which no conception will take place? A. Yes.

No. 30
Defendant's
Evidence
Dr. Nava-
ratnam
Cross-
examination
—continued.

Q. If intercourse takes place? A. Yes.

Q. In other words you support the theory sponsored by Ogineau and Knause? A. Yes.

Q. You have read this book "Clinical Contraception" by Dr. Gladys Cox? A. I do not consider her as an authority.

Q. It is a book to which Lord Horder the King's Physician has written a foreword. A. Yes.

(To Court :

Q. What is Lord Horder? A. He is a physician. In all these books on contraception they advocate some method of contraception which is fool proof and considered with those methods the medical safe period is not a fool proof safe period.)

Q. They must be ovulating at abnormal periods and conception may be taking place? A. Yes.

Page 25 of Gladys Cox read. Page 26 read. Do you agree with those conclusions? A. Generally.

Q. Anyway it is not rubbish? A. It is not the recently accepted view.

Q. Cameron is a well-known authority? A. Yes.

Page 287 (1940 Edition) put to witness. This is the most recent authority on the subject. The period stated by Knause—you agree with that? A. I do not agree with the portion that the period is too rigid.

Q. You yourself doctor have made no independent investigation on this question of safe period or the menstrual cycle or the possibility of conception outside this 9th to 17th day period? A. I have not made special investigations.

Q. You are concerned with the case as it presents itself to you? A. Yes. We are also asked for advice in regard to sterility. We also advise them to have coitus in the period in which there is the expected ovulation.

Q. How many ladies pass through your hands during a year? A. About 10,000 a year.

Q. How many pass through your hands? A. The difficult cases I deal with with the other obstetrician.

Q. You also know the menstrual history? A. Yes.

Q. You keep no record either in the Lying-in-Home or outside—you do not keep records? A. We keep.

Q. You do not keep a record of the persons whom you advise to have coitus during the 9th to 17th period? A. Yes.

Q. Have you any day considered all the statistics you have collected? A. I have not made a study of that.

Q. But you only know that in certain cases they have been successful? A. Yes.

Q. They have also been unsuccessful. You do not know whether they have conceived outside the period? A. When a person lives as husband and wife it is difficult to say so and I do not know whether my instructions have been followed.

No. 30
Defendant's
Evidence
Dr. Nava-
ratnam
Cross-
examination
—continued.

(To Court :

Q. Let us know what you mean by an irregular menstruation? A. I will call an irregular menstruation when a period is delayed beyond two or three weeks beyond the expected date or a woman who bleeds once in two weeks or so.

10 Q. Do you know of a case where the same woman menstruates once in 20 days in one month once in 30 days in the next month and once in 35 days in the next months and so on? A. No. They give the history of a period which is advancing or delayed. A person who is used to advancing keeps on advancing.

Q. Did you hear Dr. Attygalle's evidence? Do you agree with him? A. I agree with him more or less. There are certain people who do not menstruate except once in two or three months.)

Shown the American Journal of Obstetrics and Gynæcology, January, 1934, at page 75. Look at 36 and 66? A. I quite agree with Dr. 20 Attygalle that when a woman bleeds it is not always that you can call it a menstruation. I find here that they are all delayed. I have never met such a case where it is 16 and then 48.

Q. A woman bleeds how is one to say whether it is menstruation or non-menstruation? How does a doctor find that out? A. If it occurs at regular monthly cycles and has all the characteristics of a menstrual discharge we call it a menstrual period but where it becomes pathological it is always investigated by curretage and scraping. It is a part of the treatment.

Q. These are special investigations carried out by Dr. Fluman. I 80 take it that he is a medical man of great weight and authority in your profession? A. Yes.

Q. And when these investigations were carried on for this special purpose he would have seen to the distinction you are now drawing? A. He was taking statistics of what is ordinarily called menstruation.

Q. Why doctor, Dr. Fluman calls it menstruation because he is a doctor? A. I have not read the whole article.

(To Court :

Q. Every time a lady puts a napkin does it mean she is menstruating? A. No.)

40 Q. Those statistics are based on young girls—unmarried women? A. Married women have a greater chance of having their cycles regularly than a working woman like nurses, waitresses who are apt to have abnormal monthly periods.

Page 74 of Fluman put to witness. A. I think he should have excluded some more cases.

No. 80
Defendant's
Evidence
Dr. Nava-
ratnam
Cross-
examination
—continued.

Q. He has considered the point you are making? A. Whether he has considered to such an extent as to accord with medico legal experience I do not know.

Q. Does that table accord with your experience? A. I agree to to a certain extent.

Q. Does 33 and 66 accord with your experience? A. In one month ovulation has not taken place probably. This occurs with young girls. In a large number of those cases ovulation was not occurring regularly.

Q. In the case of an irregular menstruating woman ovulation will not occur regularly? A. Yes. 10

Q. In the case of irregular menstruating women ovulation is irregular A. Yes.

Q. But she can and she will conceive? A. Of course.

Q. Assuming that the plaintiff is a lady with irregular periods if she had her period on the 12th July you cannot say when the next period is due? It is possible that she may conceive on the 9th August that is even after the 28th day? A. Yes.

Q. It is also possible that on the 11th August after a fruitful coitus on the 9th she may bleed a little? A. Yes. 20

Q. Forgetting for one moment that the date of fruitful coitus was on the 9th August and you know only the first date of the last menstruation that is the 12th July would Dr. Wickremasooriya be right in saying that if the plaintiff had her menstruation on the 12th July and her menses ceased after that that is she conceived before the next menstrual date the baby will be born about the 18th April? A. Yes.

Q. You know often doctor that the period of gestation the period from insemination to date of delivery sometimes advances or it may be delayed? A. Usually it is 8 days this side or that side.

Q. As a matter of fact you have known cases which have advanced up to about 330 to 320 days? A. Yes. 30

Q. Similarly it may be advanced by a couple of weeks before the expected date? A. Yes. 35

Q. Now doctor if the child was born on the 26th March he would be on the 258th day? A. 257th day.

Q. Can you make out the difference of a child born on the 257th day and the 265th day? Can you tell the difference in ordinary cases of delivery? Would you be able to tell the difference of a child born on the 257th day and the 270th day? They are both in the 9th month? A. There will be varying degrees of maturity. 40

Q. Would you be able to recognise it for practical purposes? A. There will be a thirty-day difference which is visible to the eye of an expert.

(To Court :

Q. For a Fellow of the Royal College of Obstetricians and Gynæcologists—would he be able to say the difference between the 257th day child and the 270th day child? A. Yes. It will be apparent to the eye.)

Q. It is a 13-day difference and both children are in the ninth month?
A. You are taking a normal monthly cycle and proper ovulation?

Q. Yes. A. I say a difference of two weeks it would be difficult to say but anything over two weeks it will be easy to say.

10 Q. In the case of an irregularly menstruating woman would that be different? A. In the case of an irregularly menstruating woman we go by other data.

(To Court :

Q. Suppose you know nothing about the earlier history can you by looking at the child say it is a fully developed child or not? A. I can.

Q. Can you say whether it is an eighth month child or ninth month child? A. I can say if the difference is more than two weeks.)

Q. If the difference is about a fortnight you will be able to say?
A. Yes.

20 Taylor page 47 put to witness. “The most progressive stage of development is considered to be.....”? A. I do not know whether Taylor is referring to lunar or calendar months.

Q. Supposing it is calendar months would this statement be correct?
A. Yes.

Q. Supposing it is lunar months would this be correct? A. Yes, the degree of maturity will differ.

Q. You agree with Taylor? A. Yes.

Q. A child who was born on the 26th March in the illustration given you was born on the 257th day that is between the 8th and 9th calendar
30 month? A. Was it after an irregular monthly period? Why? It makes a difference.

If I examine a patient and I find the period of gestation does not correspond with the last monthly period I just ignore the last monthly period.

Q. Therefore in the case of a woman with irregular periods you cannot estimate the degree of maturity? A. I go by my physical examination.

Q. Therefore you must see the child before you express an opinion? You can note the degree of development of the child in the womb. When
40 you express an opinion after the child is born you will have to obtain her menstrual history before you express the opinion? A. Why is that? Unless we want to find out when the child was born we will never ask for her menstrual history after the child is born.

No. 30
Defendant's
Evidence
Dr. Nava-
ratnam
Cross-
examination
—continued.

Q. You say in the case of a regularly menstruating woman merely from reckoning the dates it is not possible to state how long its period of gestation was? A. Yes.

Q. Is that your practice or is that the general recognised medical practice? A. Yes. I can give you instances. While a woman is nursing her baby she will have periods and will not have periods for two or three months and she may conceive after that. If we go on her statement we will be clean wrong. We must go by other data.

Q. The other data being? A. If she had vomiting we can start from that. The other thing is quickening the first healthy movements of the child during the 16th to the 18th week. If a medical man has been frequently examining her the foetal heart sounds, the size of the uterus the height of the fundus, etc. In special cases X'Ray examination.

Q. Assuming in this case you have a lady with an irregular menstrual cycle whom Dr. Wickremasooriya on examination said had heard the foetal heart sounds on the 17th December so that on November 15th or 22nd she was in the 5th month in October the uterus was four-finger breadths above the symphysis pubes—on those points can you express an opinion? A. Yes.

Q. Can you say on that state in November that she was in the fifth month? A. Yes.

Q. In December she would be in the 6th month? A. Yes. Was Dr. Wickremasooriya referring to calendar months or lunar months.

Q. He was referring to calendar months. Could not the baby born on the 26th March be a mature child? A. Yes.

XXN. by MR. DAVID. Nil.

REXD.

No. 30
Defendant's
Evidence
Dr. Nava-
ratnam Re-
examination

Q. On that basis it would be born as a mature child on the 26th March? A. Yes.

Q. On the 23rd October Dr. Wickremasooriya says that the fundus was 4-finger breadths above the symphysis pubes and he says his 4-finger breadths is 4 inches. That would put the period of gestation to? A. 16 weeks.

Q. Then can you tell us what the period of conception would be? A. Towards the middle of April.

Q. That is the date of delivery? A. Yes.

Q. I was asking you the date of conception? A. That would be 16 weeks earlier.

(To Court :

Q. Husband and wife slept under the same roof between the 17th and 19th April, 1941, and thereafter the husband was absent till 9th August. Dr. Wickremasooriya saw this lady on 23rd October and found four-finger breadths, then he saw her in November it may be the 15th or

22nd November on that day the Dr. told Mr. Alles that his wife was in the fifth month of pregnancy, this child was born on the 26th March and according to Dr. Wickremasooriya it was a fully developed child—when was that child conceived? *A.* Somewhere about 11th June.

No. 30
Defendant's
Evidence
Dr. Navar-
ratnam Re-
examination
—continued.

Q. Not the 9th August? *A.* No.

Q. Impossible date? *A.* Impossible.

Q. The furthest date from the 11th June? *A.* 18th to end of June.

Q. August is completely excluded according to you? *A.* Yes.

10 To Mr. Amerasekera. (Further cross-examination with permission).

Q. How do you say on the data given—why did you alter your opinion?

No. 30
Defendant's
Evidence
Dr. Navar-
ratnam fur-
ther Cross-
examination

(I disallow the question.)

Q. You said the last date of menstruation was on 12th July on examination he found the fundus to be 4-finger breadths above the pubes on the 23rd October, on the 15th or 22nd November Dr. Wickremasooriya said she was in the fifth month on the 17th December he said he heard the foetal heart sounds and the child was born on 26th March that would be the child would be a full term child? *A.* If the last monthly period 20 was on the 12th July and ovulation was regular.

Q. She is a lady with an irregular cycle? *A.* If she is a person with an irregular cycle you must cut out the date 12th July because that date has no significance whatever. You cannot calculate from that date when it was not a fixed date.

Q. Will you show me one authority where it is said that in the case of irregularly menstruating women the first date of the last menstruation cannot be taken into account? *A.* These text books on midwifery are written for the use of medical men and for medical students who have had four years' scientific studies where the earlier developments of physio- 30 logy, embryology, etc. are understood. When a person says it is 280th day it is taken for granted that it is a woman with a regular menstrual cycle. It is taken as an axiom.

Q. I think you have read authorities here calculating on monthly cycles of 28 days. *A.* I have no authority here but I can give authorities tomorrow. You can take it as my evidence that in the case of a woman who is not menstruating in the regular monthly cycle of 28 days the first date of the last monthly period cannot be taken into account.

Q. Midwifery by Ten Teachers page 50. This is a text book you have recommended your students? *A.* Yes, one of the books I have 40 recommended.

Q. It is understood that it is a regular monthly period. Nowhere is it said so? *A.* I will prove it. Witness refers to page 77 of Eden & Holland which reads: "It is usual to reckon the beginning of pregnancy from the last date of the regular monthly menstrual period. This method

No. 30
Defendant's
Evidence
Dr. Nava-
ratnam fur-
ther Cross-
examination
—continued.

is certainly fallacious for pregnancy may occur during a period of amenorrhœa due to other causes such as cycles....." I wash it out and every other medical man does it.

Q. Do you take no account of the fact that the date of fruitful sexual intercourse does not correspond with the date of menstruation but it is the best method available for the purpose? **A.** Sometimes however the duration of pregnancy must be estimated from other data such as the size of the uterus and height of uterus.

No. 30
Defendant's
Evidence
Dr. Nava-
ratnam fur-
ther Re-
examination

Further REXD.

Q. You told us in the case of nursing mothers sometimes during 10 lactation that they do have periods and stop? **A.** Yes.

Q. Is it possible for them to ovulate while they are not having periods? **A.** Towards the end of a period of amenorrhœa they may.

Q. After such ovulation conception takes place and you calculate on the basis of the last menses what would happen? **A.** It will be two or three months out.

Sgd. R. F. DIAS,
D. J.

Case postponed for Friday.

Sgd. R. F. DIAS, 20
D. J.

15th January, 1943.

Same appearances as before.

MR. WICKREMANAYAKE calls :

No. 30
Defendant's
Evidence
Dr. Frank
Gunasekera
examination

DR. FRANK GUNASEKERA, sworn, M.R.C.S. (England) L.R.C.P. (London), L.M.S. (Ceylon).

(To Court :

Q. You are having the honour O.B.E.? **A.** Yes. I am also a Colonel of the Ceylon Defence Force. I was the Officer Commanding the Ceylon Medical Corps at one time. I am 33 years in practice. I have a 30 fair practice.)

Q. You were called in to attend on the plaintiff in July, 1941? **A.** Yes.

Q. You are their family doctor? **A.** I was the family doctor for some time and in this particular instance I was called in. After Mrs. Alles got married I was not their family doctor. Before she got married I was consulted.

Q. You saw her? **A.** On the 9th, 10th and 11th July.

Q. Was the husband at home then? **A.** No.

Q. Who was there when you went in? **A.** In the room you mean? 40
Yes. A. I saw Dr. Samahin in the room.

(To Court :

Q. All three dates ? A. On the first date I think.)

Q. Anybody else ? A. I believe the younger sister was in the verandah.

Q. In the room was Dr. Samahin there when you saw the patient ?
 A. Yes.

Q. You treated her for renal colic ? A. Yes.

Q. Did you speak to Dr. Samahin ? A. Yes, I did.

(To Court :

10 After my examination I spoke to him. He said he was not attending on her. I did not believe Dr. Samahin was in attendance on Mrs. Alles. He did not give me that impression. Plaintiff it was who called me in.

Q. He was in the room while you were examining the patient ? A. Yes.

Q. Was that the first date of her illness ? A. I do not know, but I think it was the first date of acute renal colic.

Q. In what capacity was the other doctor in the room ? A. I cannot say—may be as a friend of the family.

(To Court :

20 Q. When you examined her was Dr. Samahin in the room ? A. Yes.

Q. How was she dressed—night dress or what ? A. She was in her ordinary clothes.

Q. Had she to undress ? A. I had to examine her next to the skin.

Q. Had you to examine her body ? A. Yes.

Q. For that had she to partially undress ? A. Yes.

Q. Was Dr. Samahin present ? A. I believe he was as far as my recollection goes.)

30 Q. During the course of your examination and enquiry on those three dates had she on any occasion mentioned the fact that her periods were due ? A. I do not think. It was not relevant. I did not ask her and she did not volunteer.

Q. The pains were in the abdominal region ? A. Yes. I thought it was a renal colic caused by stones. I thought it was due to some muscular action. The pain would be in the back and in the abdomen.

Q. On the 11th July you examined her ? A. Yes.

Q. Did she on that day mention the fact that her periods had come on ? A. No.

40 Q. Did you examine her on the last date ? A. Yes.

(To Court :

Q. For that did you see the lower part of the body ? A. Yes,

No. 30
Defendant's
Evidence
Dr. Frank
Gunasekera
examination
—continued.

Q. Was she wearing a napkin? **A.** I can't remember. My attention was not drawn to the fact that she was having her periods at the time.

Q. Dr. Samahin was there when you examined the patient—did you have any discussion with him as a doctor? **A.** I gave my diagnosis to the patient. I told the patient that she was probably having a renal colic cataract. Dr. Samahin did not quite agree. He did not express an opinion.

Q. What did he think it was? **A.** I did not ask him.

Q. Did he tell you that he did not agree? **A.** He said so. I did not ask him why he thought so. I felt I was in attendance and that he was an outsider.

Q. Vomitting is sometimes a symptom of renal colic? **A.** Yes.

Q. It is also a symptom of early pregnancy? **A.** Yes.

Q. Did she say she had vomitting? **A.** She had at the time.

Q. When Dr. Samahin disagreed with your diagnosis did he offer any suggestion as to what it might be? **A.** No.

Q. Have you got a large obstetric practice? **A.** I have a fair obstetric practice.

(To Court :

20

Q. What class of person is your patient? **A.** All classes.)

Q. How many children do you deliver in a year? **A.** An average of about 45 to 50 a year which I personally conduct. I am booked for that amount of cases. There are a few more cases in which I am called in at the delivery. I started with about 45 persons.

Dr. Wickremasooriya has told us that he delivered on the 26th March Mrs. Alles of her baby, he has said the child.....

(To Court :

Q. What are the signs of a fully developed child? **A.** There are various signs. There is the length of the child the weight of the child, the condition of the skin.....)

Q. In a fully developed child? **A.** It would be smooth, not wrinkled. There would be sub-cutaneous fat, the condition of the hair, the finger nails and toe nails and in the case of a male child the testes in most cases usually in the scrotum there will be a lusty cry and the baby takes the breasts quite well.)

Q. Dr. Wickremasooriya has said that the child was a full-term child that the skin was smooth it had a good growth of hair the finger nails projected beyond the tips of the fingers, he has told us the testes descended into the scrotum, the child moved vigorously, etc. Would you agree with that view? **A.** Yes.

Q. Can you tell the difference between an eighth-month child and a ninth-month child? **A.** There are very fine differences. It is rather

difficult to say exactly whether it is at the end of the eighth or ninth month but for instance some people would say that one would find the testes down to the scrotum, the finger nails could not be above the tips of the fingers.

No. 80
Defendant's
Evidence
Dr. Frank
Gunasekera
examination
—continued.

Q. That child with those developments was delivered on the 26th March ; could that child possibly have been conceived on the 9th August which is 230 days or 32 weeks and 6 days or 7 calendar months and 15 days from 9th August to 26th March ? Could that child have been delivered on the 26th March having been begotten on the 9th August ? A. I should not think so.

Q. About within what limits would this child have been conceived ? A. 17th or 18th June.

Q. You allow a little margin one way or the other ? A. About 8 or 10 days on either side.

Q. You say the child would have been conceived in the latter half of June ? A. Yes.

Q. Not on the 9th August ? A. Not likely.

XXD. by MR. E. B. WICKREMANAYAKE.

Q. You have not made any special study of obstetrics or gynæcology ? A. No.

Q. You do not claim to be an expert ? A. No.

Q. This question as to the duration of gestation is a controversial question ? A. We calculate from the first date of the last menstrual period to the date of delivery.

Q. You cannot off hand without considering the matter give an expert opinion on data given to you ? A. I could not say definitely.

Q. You are given a rough calculation. Ordinarily how do you calculate suppose you were given the date of birth how would you calculate the date of conception ? A. I would go back about 265 to 270 days. That would be the conception delivery period.

Q. That is a rough and ready method it is not an infallible method ? A. No.

Q. It is not a measure which admits of no variation ? A. No.

(To Court :

Q. But could this fully developed child have been conceived on the 9th August ? A. I do not think so.)

Q. Your opinion was that this child was probably conceived during the 17th or 18th June ? A. Yes.

Q. If this was so this lady must have had her periods previous to that date ? A. Roughly 280 days comes to about 17th or 18th June.

Q. 280 days will take you to the 10th June ? A. I will accept that. The 17th or 18th would be the probable date of conception,

No. 80
Defendant's
Evidence
Dr. Frank
Gunasekera
Cross-
examination

Q. In these matters doctor when you say that she is carrying a child in the fifth month or sixth month your calculation begins from the first date of the last menstrual period? A. Yes.

Q. Suppose you had examined the lady, suppose she had her last period on the 10th June and you examined her on the 23rd October—how many weeks would that child have been in the womb? A. Just over 4 months; $4\frac{1}{2}$ months.

Q. About 18 weeks? A. Yes.

Q. Suppose you examined a lady carrying a child for that period what signs would you expect to find in her? 4 or $4\frac{1}{2}$ months is correct? 10 From 10th June to 23rd October? A. 135 days.

Q. You generally calculate in weeks? A. 19 weeks.

Q. You examine the lady in the 19th week what signs would you expect her to show? What would be the length of the uterus? A. The fundus of the uterus would be easily palpable.

Q. Heart beats are audible? A. The foetal heart sounds are usually heard about the fifth month. You may or may not hear the foetal heart sounds.

Q. Would the child have quickened? A. Yes.

Q. How high would the uterus be above the symphysis pubes? A. 20 There again it depends on the water in the uterus, etc.

Q. Normal women? A. About $3\frac{1}{2}$ to 4 four-finger breadths.

Q. Do you calculate in finger breadths or in inches? A. I usually calculate in finger breadths.

Q. Using your fingers as your standard? A. Yes.

Q. You know the length of your fingers? A. I make a rough calculation.

Q. That is not a standard measure? I do not think it is.

Q. Any other sign would you find to tell the age of the child assuming the last menses was on the 10th June? A. I would ask the woman 30 for the history.

(To Court :

Q. Supposing the woman was a dumb woman? A. I would roughly say it would be about the fourth month if it was a dumb woman.)

Q. If you examined her somewhere in the middle of November—15th or 22nd—how old would the child be in the womb? Assuming the last menstruation was on the 10th June? A. About $5\frac{1}{2}$ months.

Q. In the sixth month? A. Yes.

Q. At that period of time what would you expect to find—foetal heart sounds? A. Yes.

Q. Definite? A. Yes.

Q. Any other sign by which you can tell the age of the child at that point of time? A. Inter uteral.

Q. How high would the womb be ? A. It would be just below the umblicus.

Q. And the length of the uterus ? A. I cannot tell you. That depends on each person.

Q. But roughly ; on the average ? A. I am afraid I cannot tell you.

Q. Suppose you examined the child again on the 17th December how old would the child be then ? A. A little over six months.

Q. In weeks what would that be ? A. Roughly 25 weeks. I am
10 calculating four weeks to the month.

Q. The child would be in the 26th week ? A. Yes.

Q. That would be a fairly well-developed child ? A. Yes.

Q. What would be the signs you would expect to find then ? Heart beats definite ? A. Yes.

Q. Uterus just above the umblicus ? A. Yes.

Q. Let us take a hypothetical case. If the lady told you that the first date of her last menstrual period was on the 12th July when would you calculate the probable date of delivery ? A. Roughly about the 20th April.

Q. How many days—have you calculated ? A. Roughly 280
20 days.

Q. You would tell her to get the midwife ready and other things by ? A. 20th April.

(To Court :

Q. Suppose a lady came to you and you diagnosed pregnancy and she asked you when she should get ready ? A. I would say 20th April.)

Q. The child would be born within certain limits ? A. Yes.

(To Court :

Q. Could a full term child be born on the 26th March ? A. I
30 should not think it possible. Not a full term fully developed child.)

Q. On the 20th April you would expect the lady to be delivered of a fully developed child ? A. Yes.

Q. That is a child who would have completed the 9 months ? A. Yes.

Q. If that child was delivered 2 weeks before 20th April ? A. Yes, I would give 10 or 12 days before or after.

Q. If the child was born on the 6th April you would say ? A. It might be a full term child.

Q. A child born any time after the eighth month is completed is
40 extremely difficult to distinguish from a child born at the end of the ninth month ? A. There are certain signs but they are variable.

No. 30
Defendant's
Evidence
Dr. Frank
Gunasekera
Cross-
examination
—continued.

Q. Unless a doctor sat down and looked for them he could not find them? A. No. He could find if he looked.

Q. Have you ever looked to see for these differences? A. I never had occasion.

(To Court :

Q. If an expert sat down and looked he would be able to see? A. Yes.)

Q. Is it possible in every case to say that or only in the majority of cases? A. I cannot answer that question; that is for an expert to answer.

10

Taylor page 47 put to witness.

(To Court :

Q. Suppose your patient at the time of delivery you knew there was a divorce case and some question had arisen about the paternity of the child which made you look carefully could you although not an expert distinguish an eighth-month child and a ninth-month child under those circumstances? A. I should have to take several circumstances into consideration.

Q. Would you be able to distinguish? A. I might be able to distinguish if the signs are evident. For instance the finger nails and toe 20 nails the cry of the baby and the other things.)

Q. Would you be able to do it with such a degree of certainty that you would swear on oath? A. I would not like to swear on oath.

Q. You would look for the purpose of giving instructions to the nurse and midwife? A. Yes.

Taylor page 47 put to witness.

Q. You agree with that? A. That is what I have always said.

Q. Given the data I have given you the lady as her menstrual period on the 12th July, child born 26th March that child would be 257 days old? A. I will accept that.

30

Q. That would be a child who has passed the eighth month? A. Yes.

Q. A child in the ninth month? A. Yes.

Q. As a matter of fact it would be about 8 months and 17 days? A. Yes.

Q. That child would have practically the same physical features as a fully developed child? A. Unless I examine the child very carefully. I would note the cry of the baby.

Q. For the purposes of instructing the nurses you would give the same instructions as you would give for a nine-month child? A. It 40 depends on the development of the child. If the child was feeble I would give the nurse instructions to wrap the child.

Q. But let us take the ordinary normal child? Weighing $6\frac{1}{2}$ lbs.?

A. I should think if the child was $6\frac{1}{2}$ lbs. I would not give any special instructions.

Q. Assuming it was an $8\frac{1}{2}$ -month child—if the child was $6\frac{1}{2}$ lbs.?

A. I will not worry very much about the viability of the child.

Q. You cannot distinguish with any certainty the child born at the end of the eighth month and a child born at the end of the ninth month and a *fortiori* it must follow that a child born after $8\frac{1}{2}$ months it will be more difficult? A. Yes, except that there will be very minute differences which may appear.

Q. So that a child who bears all the characteristics of a full term child can be born to a lady on the 26th March her last periods having been on the 12th July? A. It is possible the child may have the characteristics.

Q. In other words it is possible for a child to have been born on the 26th March having the characteristics of a full term child? A. I could not follow that.

Question repeated. A. I would say yes with certain reservations. The child would not have all the characteristics. It may have most of the characteristics. It is very difficult to distinguish.

Q. Which for ordinary purposes are seen? A. Yes.

Q. For a child to be distinguished it cannot be distinguished unless under examination? A. Yes.

Q. You know ladies have dry labour? A. Yes.

Q. In all cases like that would you expect the child to be born earlier than otherwise it would be born? A. It depends when the membranes are ruptured.

Q. If she did not rupture the membranes on the 26th March she would ordinarily have gone on longer? A. She may have gone on for another week perhaps. But the first signs of a normal accouchement is sometimes the rupture of the membranes but not always.

Q. If the lady did not rupture the membrane on the 26th March she may have gone on a little longer? A. She may have started her pains on the 27th March.

Q. Again she might not? A. I would give 8 or 10 days this way or that way.

Q. The child would not necessarily be born on that day? A. That is impossible to say.

Q. It is possible; it may not be probable? A. That is so.

Q. What period of gestation would you expect for a fully developed child? A. 9 months.

Q. Always? Calculating from the last menstrual period you say a full term child cannot be born before the 280 days? A. It may be born in 270 days.

No. 30
Defendant's
Evidence
Dr. Frank
Gunasekera
Cross-
examination
—continued.

Q. What is the minimum period you give and what is the maximum period? A. You mean the conception delivery period?

No, not conception delivery period; I am basing on the last menstrual period. What is the minimum what is the maximum? A. It will go for a fortnight after the calculated time.

Q. The minimum? A. The child may come at any time.

Q. A fully developed child? A. 9 or 10 days on either side of the calculated dates.

Q. The minimum you would give is 265 or 270 days? A. Yes.

(To Court :

10

Q. That will depend on the data given to you being correct? A. Yes.)

Q. You know R. W. Johnstone is an authority on the subject? A. I accept that.

Page 93 of his book put to witness, second paragraph page 93. Would you accept that as correct? A. What is the first date?

240 days? A. 320 and 331 I am more inclined to put as post mature children.

Q. What about 240 days? A. It is really an eight-month child. It is difficult to say whether that child is fully developed or not. 20

Q. Dr. Johnstone talks of fully developed children? A. After all that is an experience.

Q. Do you agree with that or disagree with that? A. In my experience I have not had cases like that.

Q. Would you deny the possibility of such a thing like that? A. Not in the face of what Dr. Johnstone says.

Q. Would it be possible for a fully developed child to be born 250 days after the last menstrual period? A. Well according to Dr. Johnstone it is possible.

(To Court :

30

Q. According to Dr. Frank Gunasekera? A. It is not my experience.)

I would not like to deny it in the face of what Dr. Johnstone says.

Q. Suppose a child was delivered 250 days after could you be able to distinguish it ordinarily for practical purposes from a ninth month old child? Not without a close examination.

(To Court :

Q. But with close examination? It is possible but it is difficult.)

There are certain characteristics which appear at the end of the eighth month, at the end of the ninth month. 40

Q. It is possible in every case? A. I would not like to say so.

Q. There are cases in which you may not be able to tell the differences? A. That is possible. I would not like to lay down the law on the point.

Q. If a lady had her last menstrual period on the 12th July she must have conceived sometime thereafter? A. Yes.

(To Court :

Q. Can't a woman menstruate after conception? A. They do rarely—they have bleeding.)

Q. You will not call it menstruation? A. No.

10 (To Court :

Q. Had you attended on the lady on the last confinement? A. No.)

Q. After conception the lady may have some slight bleeding but that is not menstruation? A. No.

Q. The flow lasts for 6 or 7 days in menstruation sometimes 4 or 5? A. Yes.

Q. Let us assume that this lady had the first date of her last menstrual period on the 12th July—she must have conceived after that? A. Yes.

20 Q. And she must have conceived between that date and the date on which the next period was due if she did not have a period after that date? A. Yes.

Q. What is the ordinary menstrual cycle of a woman? A. The normal cycle is 28 days.

Q. Is it not the fact that it is very rare to have a woman with a normal cycle of 28 days? A. In the sense that a woman cannot say she will menstruate 28 days after in the next month. That is very rare.

Q. But ordinarily doctor the periods normally are between 30 to 35 days? A. It varies.

30 Q. I am putting it to you doctor that is the usual thing? A. It may be 28 days, 30 to 32 days, it may be a couple of days earlier sometimes.

Q. You say a woman can menstruate and have her periods in 28 days in one month, then in 32 days and so on? A. The period varying.

(To Court :

Q. What do you mean by a menstrual cycle? A. From first date of one menstruation to the next date of menstruation.

Q. Is that a constant factor? A. No.

Q. Can one have one menstrual cycle in February, another in March and another in April? A. That is not usual. Unless it is a matter of 2 or 3 days. I will not like to give 10 or 14 days.)

40 Q. I put it to you that a woman has a regular cycle of 28 days very rarely? That is there is hardly a woman who has her period every 28 days? A. I should say it is very rare.

No. 30
Defendant's
Evidence
Dr. Frank
Gunasekera
Cross-
examination
—continued.

Q. As a matter of fact some experts say the only thing regular about menstruation is its irregularity? No answer.

(To Court :

Q. Have you known a woman who menstruates one month in 28 day then the next month in 14 days the next month in 31 days? A. I cannot say I have.

Q. Dr. Attygalle says such a person is an impossibility? A. I have not come across women like that.)

Q. But you would not like to take it upon yourself to say it is impossible? A. But I have never heard of such a woman. I would say there was something wrong with her.

Q. You know the American journal of obstetrics and Gynæcology? A. Yes.

Q. You do not read that? A. No.

Q. You know the contributors to that—Dr. Fluman? A. I have heard of him.

Q. He is a well-known authority on menstruation? A. I have not heard of that. I have heard of him but I do not know whether it was in that connection.

Q. But is this gentleman a well-known authority on menstruation? A. I cannot say.

Q. You have heard of him? A. But I cannot say in what connection.

Q. He is an authority on obstetrics and gynæcology? A. I accept that statement of counsel.

Q. He has written an article on the length of the human menstrual cycle and he has made.....has anybody made local investigations of the menstrual cycle of local women? A. Not to my knowledge.

Q. Is there any difference in the menstrual cycle of American women and Sinhalese women? A. I would not expect very much difference.

Q. He has made certain investigations and he has drawn up a table showing the various persons who have been kept under observation and he gives here at page 75 his observations. He says it is of interest to note the pertinacity in which traditional superstitions are held by the profession.....uterine or ovarine diseased. Look at that table column 1 Nos. 66 and 38. There you see a lady the age is given the date on which she attained puberty is given and the last the cycle—the periods after which she got her periods? A. Yes.

Q. You see there a variation—you read those figures? A. No. 36 for instance 31, 41, 43, 104, 53, 29.

Q. And No. 66? A. 17, 12, 14, 13, 18, 23, etc. I have never come across women like that.

(To Court :

Q. Is that a menstrual curiosity? A. If it is menstruation it is a curiosity.

Q. And assuming that data is correct? A. Yes.)

Q. Dr. Fluman has gone on the basis that it is menstruation A. I will accept that.

Q. He knows what he is about? A. Probably does.

Q. Dr will you read from page 74 bottom? (Witness does so.)

Q. You see Dr. Fluman has eliminated all other possibilities? A. Yes. He has eliminated the case of young women who started menstruation.

Q. And amenorrhœa? A. Yes. Certain cases he has excluded.

Q. You are not aware of any other investigations on this same matter by anybody else? A. I am not aware.

Q. Certainly not in Ceylon? A. No.

Q. To get back to what I was on you said if a lady had her menstrual periods on the 12th July she will conceive thereafter between that date and the next date of her menstruation? It will not be possible to say when that next period will fall due? A. Not exactly.

Q. Would it be possible to conceive at any point of time between those two periods? A. There again there is a period known as the period of fertility which is roughly about the middle period between one menstruation and another and there again there is a period known as the safe period.

(To Court :

Q. When you came into the witness-box did you know you were going to be questioned about this? A. No.

Q. You did not do any reading or attend any consultations? A. No. I came here to give evidence on the renal colic.)

Q. You have not made investigations yourself? A. There are lots of people who have told me that they have had intercourse during the safe period and have had children.

Q. If this lady had a cycle ordinarily of 30 to 35 days the next period would be after the 12th August? A. I should say so.

Q. Assuming that, then at any point of time between the 12th July and 12th August she could have conceived? A. It is possible but the probable dates would be the middle period.

Q. You subscribe to the theory that the fertile period is the middle period? A. Yes.

Q. You yourself have made no investigation on the matter? A. No.

No. 30
Defendant's
Evidence
Dr. Frank
Gunasekera
Cross-
examination
—continued.

Q. Even on that theory if a lady is suffering under some mental stress it is possible for her to ovulate after the middle period—emotion might produce ovulation? A. It is possible.

Q. Even Ogineau & Knauss admit that possibility? A. It is possible. I have heard that people have conceived in the safe period.

Q. Suppose you knew nothing about any date of intercourse between husband and wife; suppose she said her last period was on the 12th July and her ordinary cycle was about 30 to 35 days she could have conceived at any time between the 12th July and 12th August? A. She would not have conceived while she was menstruating. 10

Q. But at any time after the menstruation had ceased? She could not have conceived when she was menstruating? A. No.

Q. But at any time after the menstruation had stopped and the next menstruation was due she could have conceived? A. As I said there is a fertile period.

Q. You will not rule out that possibility? A. I will not rule out the possibility of conception 7 or 8 days before. About 2 or 3 days before the next period is due it is unlikely she will conceive.

Q. That is as far as you would go? A. Yes, but it is possible before that conception may take place. I would not like to rule it out 20 altogether.

Q. If a lady came to you and told you that her last menstrual period was in July and the child was born on 20th or 18th April the child could have been conceived at any time between 12th July and her next period in August? A. Any time after the 14th July and say roughly about the 9th August.

Q. And a child conceived at any time between those periods will have the same characteristics—there would be no difference between a child conceived on the 14th July and a child conceived on the 8th August? A. There are very minute differences which an expert would be able to 30 detect. It is difficult, I will admit.

Q. If the child is born on the 20th April a lady who had her last menstrual period on the 12th July it would be a full term child? A. Yes.

Q. Whether it was conceived on the 14th July or 8th August it would be a full term child? A. For all practical purposes but there might be minute differences between a child conceived on the 14th July and a child conceived on the 8th August.

Q. There would always be? A. I would not like to say always but one would expect certain differences visible to the trained eye. 40

Q. Dr. a child develops most rapidly in the 8th and 9th months? A. Yes.

Q. And is it not possible for a child who was conceived on the 8th August to make an extra spurt in the 8th and 9th months so as to make it indistinguishable? A. I am sorry I could not follow it.

Q. A child born to a lady whose last menstruation began on the 12th July is a full term child if it is born on the 20th April? A. Yes.

Q. Such a child might be conceived at any time between the menstrual period that is the 14th July and the onset of the next period? A. Yes, the possibilities are there but the probability is that it would be during the fertile period.

Q. If the child is born on the 20th April you will not be able to say by looking at the child whether it was conceived on the 14th July or 9th August? A. Except by very minute examination.

10 Q. Even so would you be able to tell? A. There are certain characteristics.

Q. Suppose it was necessary for you would it be possible for you to say that this child was conceived on the 14th July, 31st July or 9th August? A. I would not swear to any date of conception. Nobody can I think. To give the definite date of conception it is almost impossible.

Q. It would not be possible for you to deny that such a child would have been conceived on the 9th August? A. Yes.

Q. Take the data I have given you. You can't rule out the possibility of that child having been conceived on the 9th August? A. I will not like to deny it.

Q. If a lady had her menstrual period on the 12th July and the child was born on the 26th March that would be a 8½-month child? A. Yes.

Q. And for all practical purposes indistinguishable from a 9-month child? A. Yes.

Q. Such a child might have also been conceived at any time between the 12th July and 9th August? A. Yes.

Q. And also possible beyond the 9th August? A. It is possible but I would not think it probable.

Q. The ordinary gestation period of a normal woman is about 273 30 days? A. Usually we reckon it as 280 days.

Q. Because you give a certain allowance—a certain margin of error? A. Yes.

Q. What would be the conception delivery period of such a child? A. 265 to 270 I should say roughly.

Q. With regard to the question of fact which you came to give evidence about—you attended on Mrs. Alles on the 9th, 10th and 11th July, 1941? A. Yes.

Q. What time did you come on the 9th? A. I am afraid I can't tell you that.

40 Q. Dr. Samahin was in the room at the time? A. Yes.

Q. Was there anything improper in Dr. Samahin being there? A. I do not think so.

Q. If you thought it was improper you would have asked him to leave? A. I did not think there was anything wrong.

No. 30
Defendant's
Evidence
Dr. Frank
Gunasekera
Cross-
examination
—continued.

(To Court :

Q. If he was not a doctor would you think it improper? Is it usual for a Malay gentleman to be in the lady's room? If you found me in the room? A. I would have left it to the people in the house to do what was proper.)

Q. This is the prescription you gave on the 9th July P36? A. Yes.

Q. You made a slight variation on the 10th? A. Yes.

Q. On the same prescription? A. Yes.

Q. Why did you do that? A. Because on the 10th the spasm has passed off and obviously she was feeling better. 10

Q. She was vomitting on the 9th? A. It is possible. That was for the renal colic. That is a symptom of renal colic.

Q. What are the symptoms of renal colic? A. Intense pain frequent urination, vomitting and it is really a severe pain in the back referred to the groin and to the bladder.

Q. When you get renal colic you may have pain in the testicles? A. Yes.

Q. You gave this prescription—that prescription was also to stop the vomitting? A. It is to relieve the renal colic.

Q. There is nothing here given particularly to stop the vomitting? 20 A. It is to relieve the vomitting.

Q. Was the variation on the 10th due to excessive vomitting? A. I do not think so. I think she probably felt better on the 10th because I omitted the Belladonna. She must have been relieved of the pain and I have omitted it on the second visit.

(To Court :

Q. You frequently alter prescriptions like that? A. Yes.

Q. You may give a prescription with a purgative? A. Yes.

Q. The next day you may vary it omitting the salts? A. Yes.)

Q. On the 9th you made a careful examination? A. Yes. 30

Q. Abdominal examination? A. Yes.

(To Court :

Q. Was the abdomen exposed? A. Yes.)

Q. Did you eliminate the possibility of any other complaint? A. In my own mind yes.

Q. What were the other possibilities? A. Appendicitis, ectopic gestation.

Q. What exactly is that? A. That is pregnancy outside the uterus—ovarian pregnancy. We talk of pregnancy in the Fallopian tubes.

Q. You followed the usual routine? A. Yes. 40

Q. If there was a suspicion of pregnancy you would satisfy yourself that she had not had her period? **A.** The symptoms did not point to ectopic gestation. I was satisfied that the symptoms were pathognomic of renal colic.

(To Court :

Q. I did not make a vaginal examination and even then it will be difficult.)

Q. When you gave your prescription did you suspect pregnancy at all? **A.** No.

10 **Q.** You excluded pregnancy? **A.** From the symptoms.

Q. Your abdominal examination did not show pregnancy? **A.** No.

Q. You have given bromide? **A.** Yes.

Q. What for? **A.** To soothe the nerves and pain. I have gone through renal colic myself and I know what the pain is.

Q. Serious illness? **A.** It is acute agony the pain is very severe.

Q. You think any lady would have wanted her husband to have intercourse when she was suffering from renal colic? **A.** It would be cruel.

20 (To Court :

Q. But does this renal colic last all the time? It passes off.

Q. In between the spasms could she have desired to have intercourse?
A. Once the spasm passes off there is nothing to prevent her.)

Q. You gave another prescription on the 11th July P37? **A.** Yes.

Q. That mixture she was to take for some time? **A.** I have given a larger number of doses. It is a sort of continuation of the treatment.

Q. You examined her on the 9th July you did not examine her on the 10th and 11th? **A.** I did examine her on the 9th, 10th and 11th.
30 I must have examined her as I usually do. I must have felt her, tapped her.

Q. The lady showed the stones? **A.** She passed the stones as far as I remember on the 10th that is why I omitted the belladonna on the 10th. She showed the stones as far as I remember on the 10th.

Q. You made no vaginal examination on the 10th? **A.** No.

XXD. by MR. DAVID. Nil.

REXD.

Q. Your evidence is that you made no vaginal examination on any date? **A.** No.

40 **Q.** You did not think there was any need? **A.** No.

Q. Would it be possible if she was in the first month of pregnancy to find out whether she was pregnant? **A.** It is not possible.

No. 30
Defendant's
Evidence
Dr. Frank
Gunasekera
Re-exami-
nation
—continued.

Q. Another thing you spoke of was one of the possibilities was ectopic? That is really conception in the Fallopian tubes? A. Yes.

Q. Was that part of your routine? A. Yes.

Q. You were satisfied it was not? A. Yes.

Q. That was one of the possibilities with the symptoms she showed?
A. I considered the possibility of ectopic gestation, appendicitis and renal colic.

Q. Coupled that with the history and symptoms you came to a definite conclusion? A. Yes.

Q. The first date she had acute pain? Did the history show she had been unwell for a day or two before? A. She said she was well and it came on very suddenly.

Q. Did she mention anything she had done to relieve the pain? A. No, she did not tell me.

Q. Did you notice anything—that she had been having any treatment? A. I did not notice. I was told that she suddenly took ill. I did not see any bottles of medicine by the bedside. She did not tell me she had been taking any other treatment before I was called in.

Q. You said she showed you the stones? A. Yes.

Q. She showed you the stones? A. I believe when I went there the next day it was in a tray and I think she did.

Q. Can you remember who showed them? A. I think it must have been Mrs. Alles.

Q. You told us that given the date 26th March as the date of delivery and the signs of development spoken to by Dr. Wickremasooriya you would fix the date of conception as the 17th or 18th June and end of June? Dr. Wickremasooriya has given us further data. Dr. Wickremasooriya examined the patient on the 23rd October and he says that he found that the fundus was 4 inches breadth above the symphysis pubes—would that be consistent with your fixing conception between the 18th and end of 30 June? A. It would be about 16 to 18 weeks.

Q. That would take your date of conception back to? A. Somewhere about the 20th June.

Q. He has told us that on the 22nd or 15th November having examined the plaintiff he told her husband that his wife was carrying a child in the 5th month? Would that be consistent with the fixation by you of the date of conception? A. That would be about the same.

Q. On the 17th December Dr. Wickremasooriya examined her and he says that he thought the child was 24 weeks and he heard the foetal heart beats. Would that be consistent with the fixation by you of the date of conception towards the end of June? A. That is about the same.

Q. All these factors together and each of them separately takes you back to the end of June? A. Yes.

Q. You were asked whether the child could be conceived in the intermenstrual period? A. I said it was possible but it is improbable.

Q. Conception takes place only when there is an ovum ready to fertilise it? A. Yes.

Q. Ovulation takes place? A. In the middle period.

Q. That is when ovulation normally takes place? A. Yes.

Q. For the purposes of calculation you count 280 days from the first date of her last previous menses? A. Yes.

Q. That would give you a period of gestation of how many days?

10 That would give you a conception delivery period? A. 8 or 10 days less.

Q. You told us where conception is possible in any date in the menstrual period a child born 257 days from the last date of menstruation would be in the 9th month and would be for all purposes a mature child? A. Yes.

Q. But would the degree of development depend on the number of days from the last date of menstruation or on the number of days actual gestation? A. The development of the child one has got to count from the conception delivery period.

20 Q. Although the child may be a full-term child would the child show variances in development from a fully developed child? A. I do not understand.

Q. Although the child when you count from the day the lady is supposed to have had her menstruation on the 11th July you were asked whether it was not possible for her to conceive at any time between that and the next date of menstruation would there be differences observable to a person who examined closely to find out whether the child had been conceived on the 14th July or 8th August? A. Very minute differences observable to the trained eye. The differences will be in develop-
30 ment.

Q. You were asked whether menstruation was not possible after conception? A. Menstruation is not possible after conception. I would not like to call it menstruation.

(To Court :

Q. Supposing in a case where it is proved that the lady had conceived in June could she have a monthly flow on the 12th July? A. She could have a bleeding but I would not like to call it actual menstruation. Some people do have a little bleeding but it is very rare.)

40 Q. It has been put that the lady had bleedings again on the 11th August. What would you say that would—would it be in the cycle or outside the cycle? 11th July she was said to have had her menstrual period, she is supposed to have had a one-day period on 11th August,—would that give you any indication of what time the next menstruation period would be? A. That would be the date she should have her menstruation if she had not conceived,

No. 80
Defendant's
Evidence
Dr. Frank
Gunasekera
Re-exami-
nation
—continued.

Q. Is it unusual for ladies to have some little bleeding on the date the menstruation recurs? A. It is not unusual.

(To Court :

Q. Suppose there was a lady who in her previous confinement had ante-partem hæmorrhage is it likely that in her second pregnancy that there may be a little bloody discharge? A. Not necessarily.)

Q. Would the discharge if it was there tend to come on the date the menstruation is due? A. That is so.

Q. If the next menstruation was to come on 11th August do you think a fruitful conception could have taken place on the 9th August? 10
A. I do not think so because we usually rule out 2 or 3 days before the actual menstruation.

Sgd. R. F. DIAS,

D. J.

No. 80
Defendant's
Evidence
(Medical
theories)

At this stage Mr. Wickremanayake wants to call a doctor to prove that the blood grouping test is a recognised medical method of recognising identity to prove the fact that a particular person may or may not be the father of a certain child. He says he is calling the evidence to show that the fact that a child is of so many months age is not a fact that would make it the less effective. He says when the 1st defendant applied for 20 the blood grouping test one of the Counsel threw doubts on the efficacy of the blood grouping test and gave as his reason that the child was too young and also the fact that there were no experts in Ceylon competent to carry out the test.

I think the evidence is too remote. This is not a debating society. In my earlier order I think I held that the blood grouping test is an established scientific fact. What inferences are to be drawn for or against any party by not calling this evidence we will consider at the proper time. I think the evidence is too remote and I disallow the evidence.

Sgd. R. F. DIAS, 30

D. J.

Mr. Wickremanayake says that amongst his other witnesses are Mrs. Solomons, Dr. M. L. M. Salgado, Soil Chemist and Mrs. Allan Rutnam. Summonses have been served on all witnesses but they have sent medical certificates. He merely wants me to note those facts.

Sgd. R. F. DIAS,

D. J.

Mr. Wickremanayake closes 1st defendant's case putting in evidence 1D1 to 1D20.

Sgd. R. F. DIAS, 40

D. J.

MR. DAVID calls :
Luncheon interval.

Sgd. R. F. DIAS,

D. J.

At this stage Mr. Obeyesekere appears and submits action brought by the plaintiff on the ground of malicious desertion. Plaintiff closed her case on certain documentary evidence and then 1st defendant entered firstly his defence to that case and then he as plaintiff has led evidence upon his cause of action upon which he asks for a divorce on the ground of adultery and he becomes the plaintiff in that case. Submits therefore the party who comes before the Court is the defendant to that cause of action. He cites S. 598. Submits the action as originally constituted was between the plaintiff and the defendant. Then upon the defendant 10 filing his answer and making his allegation of adultery the Court added his client as a party. His client is there in the position of an added defendant. Submits the 1st defendant having now led evidence upon his cause of action where he figures as plaintiff the person to reply to that case is the 1st defendant.

No. 30
Defendant's
Evidence
(Medical
theories).
—continued.

ORDER

I have ruled and I rule again that the 2nd defendant must now commence his case.

Sgd. R. F. DIAS,
D. J.

20.

No. 31.

Added-Defendant's Evidence.

No. 31
Added-
Defendant's
Evidence
Dr. Samahin
examination

T. S. M. SAMAHIN, affd.

I am 45 years old. I am an L.M.S. (Ceylon), L.R.C.P. & S. (Edin.), L.F. & S. (Glasgow). I am at present the Port Health Officer, Galle. Before that I was D. M. O. Dimbulla and before that I was in the General Hospital as Anæsthetist. I have been in Government Service for 20 years. I am 1st Grade officer.

Q. You are married? A. Yes for just over 19 years.

(To Court :

80 Q. How many children? A. 7.

Q. You are a Malay gentleman? A. Yes.

Q. And your wife is a Malay lady? A. Yes.)

I married the elder daughter of Mr. M. K. Saldin.

Q. What is the age of your eldest child? A. 18 years, a girl.

Q. Married? A. No.

Q. You told the Court you had 7 children, the age of the youngest being? A. Three years last Christmas Day.

Q. About 1940 towards the end of that year where were you stationed
A. I was in Colombo.

No. 31
 Added-
 Defendant's
 Evidence
 Dr. Samahin
 examination
 —continued.

Q. When did you take up your appointment as anæsthetist? A. In October, 1935.

Q. And you held that post till? A. 22-10-41.

Q. When you went to Dimbulla? A. Yes.

Q. You were residing in Ward Place? A. Yes.

Q. Now when did you first meet the 1st defendant? A. I have know him for a long time.

Q. Did you meet him in England? A. No, although I was in England at the same time.

Q. When were you in England? A. In 1929—1930. 10

Q. Did you know the brother of the 1st defendant? A. Yes the whole family quite well.

Q. Were you in England together? A. Yes R. F. Alles and myself. I have known him for 25 years.

Q. You knew him very intimately? A. Yes.

Q. Do you know Dr. Senanayake of the Mental Hospital? A. Yes.

Q. You have been to his house? A. Yes. On several occasions.

Q. At Angoda? A. Yes.

Q. On any of those occasions did you meet the plaintiff in this case 20 and the 1st defendant? A. Yes at a party there.

(To Court :

Q. When? A. In 1939.

Q. Cannot you give us the date? A. About the middle of 1939.)

Q. And what was the occasion? A. Evening party. A social. Tennis and bridge.

(To Court :

Q. Any dancing? A. I cannot recollect.)

Q. You met the 1st defendant and you spoke to him? A. Yes.

Q. Had you met him previously? A. Yes. 30

Q. Conversed with him? A. Yes.

Q. You also met the plaintiff on that occasion? A. Yes.

Q. Now apart from that did you meet Mr. & Mrs. Alles on any other occasion? A. I used to go to Dr. Alles' very frequently—Dr. R. F. Alles. I go there almost every afternoon for cards and on those occasions I have met them there.

Q. Where does Dr. Alles stay? A. At Colpetty, Sea View Avenue.

Q. And you say on some of those occasions you visited him you have met both Mr. & Mrs. Alles? A. Yes. 40

Q. Have you met Mr. & Mrs. Alles at Laurentum?

(To Court :

Q. You first met this lady at Dr. Senanayake's? A. No I had met her at Dr. Alles.

Q. You met her at Dr. Senanayake's and subsequent to that at Dr. Alles'? A. No, previous to that.)

Q. Have you met 1st defendant and plaintiff at Laurentum? A. I cannot recollect, I have been there very often. We used to have a game of cards either at Dr. Alles' or at Laurentum.

Q. So you have been to Laurentum frequently? A. Yes very frequently.

Q. Do you remember the wedding of Mr. Fritzroy Gunasekere to Miss Alles, were you invited to that wedding? A. Yes at Laurentum and I attended the wedding.

(To Court :

Q. Did your wife go? A. No.

Q. Why? A. She did not go about much.

Q. Was she in purdah? A. No, but she did not like to go about to social functions.)

Q. You used to go to the Galle Face Hotel? A. Yes.

Q. And the G. O. H.? A. Yes.

Q. What exactly took you there, on what occasions? A. On a Sunday evening I go to attend the promenade concert.

(To Court :

Q. Your wife did not go? A. No.)

Q. And to attend dances at the G. O. H. on Sunday evenings?

(To Court :

Q. Your wife did not go? A. No. She does not dance.)

Q. Did you go by yourself or with friends? A. Always with friends.

Q. You know the Ludowykes? A. Yes very well.

(To Court :

Q. What are they? A. Mr. Ludowyke is employed at the Savings Bank. He is a postal clerk.)

Q. You have known that family for how long? A. About 10 years.

Q. You have visited them in their house frequently? A. Yes.

(To Court :

Q. Did your wife go there? A. She has been there on some occasions, not frequently.)

Q. And you used to go out with these people as well? A. Yes mostly with those people.

No. 31
 Added-
 Defendant's
 Evidence
 Dr. Samahin
 examination
 —continued.

Q. They were very good friends? A. Yes.

(To Court :

Q. What do you mean by those people, how many of them went with you? A. Husband, wife and two daughters.)

Q. The daughters I take it are the eldest in the family? A. Yes the two eldest in the family.

Q. You have been with those people to the Galle Face Hotel to promenade concerts and also to the G. O. H.? A. Yes.

(To Court :

Q. As your guests? A. No, there was nothing like that. 10

Q. Who did the paying? A. There was no payment.

Q. Did you not give them drinks? A. If I ordered drinks I paid.

Q. Did they stand you any drinks? A. Yes.)

Q. The treating was mutual? A. Yes.

Q. About this time were you attending the promenade concerts and dances—during the latter half of 1940? A. Yes.

Q. Was it once in a way or every Sunday? A. Almost every Sunday unless I had something else to do.

Q. And on any of those occasions did you meet the plaintiff and 1st defendant at the hotels? A. Yes. 20

Q. They also used to attend these same concerts and dances? A. Yes.

(To Court :

Q. In the middle of 1940 1st defendant had been operated for appendicitis and you were the anæsthetist? A. Yes.)

Q. Is it correct that that was the first occasion that you met the plaintiff? A. No, I had met her long before that.

(To Court :

Q. When was the operation? A. In January, 1940.

Q. So you had met her long before January, 1940? A. Yes.) 30

Q. On that occasion of the operation you were the anæsthetist and on that occasion apart from attending to Mr. Alles' bedside did you pay any visits? A. No.

Q. After the operation you had nothing further to do? A. No. I was sent for by Dr. Gabriel as anæsthetist. This was an emergency operation.

Q. Where was this operation held? A. At the Private General Hospital.

Q. At what time of the day? A. That was about 5 o'clock in the evening. I cannot be certain. 40

Q. You gave the chloroform, the operation was finished and that ended your work? A. Yes.

Q. And you paid no further visits? A. No.

(To Court :

Q. On that one visit the plaintiff was not there? A. I went into the theatre and did my work and went.

Q. You did not see him again? A. No.)

There were about six or seven doctors at this operation. Mr. Alles was the patient of Dr. Gabriel.

Q. You say there were other doctors present? A. Yes, Dr. Alles was there, Dr. M. de Costa and Dr. Fred Fonseka.

10 (To Court :

Q. Up to that time had you ever danced with the plaintiff? A. No.)

Q. And how long altogether were you there on that occasion? A. An hour and half. The operation took that time and then I went away.

Q. Towards the end of October, 1940, on certain occasions when you went to the Galle Face Hotel and the G. O. H. you met the plaintiff and 1st defendant? A. Yes. They were usually in a party.

Q. Did you know at that time who the members of that party were? A. Yes.

20 Q. Who were they? A. Mr. & Mrs. Sri Namasivayam.

Q. That was the party? A. Yes.

Q. And Mr. & Mrs. Alles? A. Yes.

(To Court :

Q. Two men and two women? A. Yes.)

Q. Was Merita there? A. I have seen her there.

Q. Does she dance? A. Yes.

Q. Was this party accustomed to come there often and did you meet them as often as you went? A. Yes.

Q. And that is both at the Galle Face Hotel and at the G. O. H.? 30 A. Yes.

Q. That dance is a fairly late dance? A. They start at 9-30.

(To Court :

Q. This is the usual dance they have every Sunday evening. After dinner the dance band comes there and plays and anybody who is there dances? A. Yes.)

Q. I take it from seeing these people there you get more friendly with them? A. At that time I was more friendly with the Namasivayams than the Alles'.

Q. Had you known them previously? A. Yes, I used to go to 40 their house for functions and dances.

Q. And then how did you become more friendly with the Alles'? A. They invited me to join their party.

No. 31
 Added-
 Defendant's
 Evidence
 Dr. Samahin
 examination
 —continued.

Q. Who did the inviting? A. All of them I suppose. I cannot specify any person.

Q. Did they invite your whole party? A. No I used to detatch myself and join these people.

(To Court :

Q. Did you give the go-by to the Ludowykes? A. No, I used to be there for a short time and join my party again.

Q. Who did the Ludowykes' girls dance with while you were not there? A. There were other males in the party.)

Q. When did the Ludowykes also get friendly with this party? A. 10 Towards the end of 1940.

Q. By constantly meeting there the two parties used to sit together and when the dance comes along one of the men go and ask the ladies to dance and so on? A. Yes.

Q. Did you introduce the Alles to the Ludowykes? A. Yes.

Q. Having met in this way on later occasions you formed one big party? A. The Ludowykes did not come as a rule to the G. O. H. except to a big function like the Police dance and so on and occasionally to the G. O. H.

(To Court :

20

Q. Are they people who usually go to the G. O. H. unless invited by you? A. No.)

Q. Would it be correct to say that as a result of these meetings by about December, 1940, you had become quite friendly with Mr. & Mrs. Alles? A. Yes.

Q. Where were they staying then? A. At Merlton, Gregory's Road.

Q. As soon as you got more friendly with them you began visiting them at their house? A. Yes.

Q. How did you happen to go there? A. They occasionally so asked me to call at their place.

Q. Do you remember who invited? A. Both Mr. & Mrs. Alles.

Q. And at that stage did the 1st defendant begin to address you by the familiar term Sambo? A. Yes, we started that at the dance hall I think.

(To Court :

At the time I first visited Merlton the old Mr. de Costa was still in Merlton.)

Q. How often did you visit at this time when you became friendly with them? A. I would drop in at Merlton once or twice a week. 40

Q. And how did you spend your time? A. Chatting and having a couple of drinks with Mr. Alles or a game of cards in which the others also would join. Mrs. Alles' younger sister was also there.

(To Court :

Q. But you never went with your wife? A. No.)

Q. Did they visit your home? A. Yes, Mr. & Mrs. Alles called over once and met my wife.

Q. About this time were you invited for lunch? A. Yes on Sundays.

(To Court :

Q. Yellow rice? A. Yes sometimes.)

Q. What was your programme at the Alles'? A. I used to drop in in the morning and sometimes all of us go out in a party and have a couple of drinks and come back for lunch.

Q. And you would go back home? A. Yes.

Q. Do you remember the 24th of December, 1940? A. Yes.

(To Court :

I do not observe Christmas.)

Q. At that date was any invitation extended to you by Mr. Alles?

A. Yes, I was asked to drop in after mid-night for supper.

Q. You knew the Alles' were Roman Catholics? A. Yes.

I was asked to drop in after mid-night and they said they had to go to Church and they asked me to come round there after they returned from Church.

Q. What were you doing on that day? That day I happened to go to the Orient Club in the evening. I am a member of that Club. I am a member of it for a long time. I go to that Club often and I spend a lot of my time there.

Q. What do you do there? A. We meet a number of friends and have a few drinks and play cards, bridge, or poker and sometimes billiards.

Q. On the 24th December what were your engagements? A. I met quite a number of friends at the Orient Club and I had quite a number of drinks and I was playing cards.

Q. What was it? A. Bridge. And I forgot all about this invitation.

Q. This game of bridge continued for some time? A. Yes.

Q. Did you get any sort of reminder? A. Yes, I had a 'phone message from Mr. Alles. The boy came and told me that Mr. Alles had telephoned.

Q. Did you do anything? A. I told the boy to tell him that I would come a little late.

Q. Did you go? A. Then the boy came and said that Mr. Alles had come for me, That was about half an hour after the telephone message,

No. 31
 Added.
 Defendant's
 Evidence
 Dr. Samahin
 examination
 —continued.

Q. Can you place the time roughly when you got that telephone message? A. About 1-30, and Alles came at about quarter to two or two.

Q. Did you go and speak to him? A. I asked the boy to ask Mr. Alles to come into the Club room where I was playing cards and he sent word saying he was not properly dressed and he could not come but he sent Mrs. Alles' younger brother to see me. He is Tony de Costa.

Q. He brought you a message from Mr. Alles? A. Yes.

Q. What happened then? A. I went up to the car and told Mr. Alles I could not come. 10

Q. What was the attire he was in? A. Shirt and a sarong.

Q. And what did he tell you? A. I told him I was engaged in a game of cards.

Q. Did he say you let me down or words like that, what did he say? He asked me why I had not turned up. I told him it was too late and I could not come.

Q. So you did not go? A. No I did not.

Q. You heard the evidence that has been led with regard to this matter that you were there at that party and partook of the supper? A. I deny that. That is a lie. 20

Q. Now on the next day in consequence of the fact that you did not attend the party did you go to Merlton? A. Yes, that was on Christmas Day.

Q. What did you say? A. There was no particular purpose in the visit.

Q. Did it have any connection with the fact that you did not attend the supper the previous night? A. Yes because I had not gone the previous night I went to say I was sorry I could not come.

Q. Then on Christmas Day did you stay there? A. No.

Q. How long was your visit? A. About half an hour. 30

Q. Were you given any refreshment? A. Yes.

Q. Did you come back to Merlton that day again? A. I cannot remember.

Q. On the 25th night did you attend any dance or party? A. No.

(To Court :

Q. Was the 1st defendant there when you went on the 25th? A. Yes.)

Q. Would it be correct to say that at this time you and the 1st defendant were very good friends? A. Yes and I used to see him often. 40

Q. Now did the 1st defendant on any occasion make any request of you with regard to your car for instance? A. Yes, he used to ring me up and ask me to bring my car occasionally.

Q. At that time 1st defendant had no car? A. At the end of 1940 I believe he had a car, beginning of 1941 he had no car.

Q. You were very friendly and you used to freely give him the use of your car? A. Yes.

Q. How would you send your car? A. I used to take the car myself. I had no chauffeur.

Q. You would take the car to Merlton to enable Mrs. Alles to go and how long will you be out on such occasions? A. About an hour or 1½ hours.

10 Q. He driving it? A. Yes.

Q. Do you know for what purpose the car was required? A. This was in the evenings.

(To Court :

Q. What about your good lady did she not want your car? A. No, she was not getting about much.)

Q. And you would wait at Merlton till the car returned? A. Yes.

Q. Apart from dances and the promenade concerts did your party yourself and the Alles' and Namasivayams go anywhere else? A. Yes we used to go to the Mount occasionally and to dances at the Town Hall—
20 the Police dance for instance.

Q. Now doctor, do you remember the time when 1st defendant went to Jaffna? A. Yes early in February, 1941.

Q. Do you remember the day he left for Jaffna? A. 1st February.

Q. Were you present when he entrained? A. Yes, in fact I took him to the station in my car. The others present were the plaintiff and her sister.

I drove the 1st defendant, his wife and Merita to the station.

Q. Did the 1st defendant say anything before he left? A. He
30 asked me to look after his wife and sister-in-law.

(To Court :

Q. These were his very words? A. Yes.

Q. What did you understand by that? A. To drop in at the house often and to be helpful to them in any way they wanted.

Q. To be helpful how? A. If they wanted to go about shopping or to any other place to give them the use of my car.

Q. Did you look after the plaintiff and Merita? A. Yes, I used to go and ask them how they were getting on.

Q. You looked after them equally? A. Yes.)

40 Q. Were any requests made to you by the plaintiff or her sister with regard to the use of your car? A. Whenever they wanted to go about they used to inquire from me whether it would be convenient for me to take them.

No. 31
 Added-
 Defendant's
 Evidence
 Dr. Samahin
 examination
 —continued.

Q. And not having a driver? A. I used to drive the car myself.

Q. Where would these people go? A. Sometimes shopping and sometimes to concerts and to dances.

(To Court :

Q. Your wife never accompanied you? A. No.)

Q. And on the occasion that Mr. Alles left for Jaffna it was your car that took them back? A. Yes.

Q. Before Mr. Alles left for Jaffna you told the Court you used to drop in at his place often for what lengths of time did you stay? This is just before Mr. Alles went to Jaffna? A. Sometimes half an hour and 10 sometimes more.

Q. And would you for instance take a rest?

(I disallow that question. I must ask counsel and I have already told him twice before that he must not put words into the mouth of the witness which he is to echo back.)

Q. Did you have occasion to use any part of that house?

(I disallow that question—another leading question.)

Q. Now when Mr. Alles went to Jaffna did you receive any kind of communications from him? A. I have had a few letters from him. He used to write to me. 20

Q. Have you got the letters? A. I have not got them.

Q. Where are they? A. I destroyed them.

Q. Now can you tell with regard to what sort of matters the 1st defendant would write? A. He used to write to me asking me to put various bets—racing bets.

Q. Would that kind of request come often or occasionally? A. Altogether he wrote four or five letters.

Q. Were they all about bets? A. Part of them, and friendly communications how we were getting on and so on.

Q. Do you remember at about this time February, 1941, anything 30 happening to Merita? A. Yes she was ill and she was removed to the General Hospital.

Q. What was wrong with her? A. She had entered the hospital on two occasions.

Q. You do not know what was wrong? A. I think on one occasion she was operated for tonsillitis and on the other occasion she was kept under observation by Dr. Gabriel for some stomach trouble.

(To Court :

I did not anaesthetize for the tonsillitis. She was away from the house about 8 days for the tonsillitis and under observation for the stomach 40 trouble about 8 days—she was absent from the house for about 16 days.)

Q. As a result of Merita's illness was there any change in the household at Merlton? A. Her aunt was staying in the house when Merita was absent.

Q. That is the Aunta? A. Yes.

Q. And do you know for how long she was there so far as your visits permitted you to observe? A. A couple of weeks I think.

(To Court :

Q. Beyond those two weeks have you seen Miss Neydorf there? A. Yes very often.

10 Q. Do you know whether at this time the wife was writing to her husband at Jaffna regularly? A. I was not aware of that.

Q. You know now from the case that there were a large number of letters? A. Yes.

Q. Do you know whether any of those letters contains a reference to Miss Neydorf staying? A. I do not know.)

Q. Well then the 1st defendant was at Jaffna, did he make any suggestions to you in regard to holidays or matters like that? A. Yes, he had asked me to come up and spend the week end with him. He made that request at the time he was leaving too.

20 Q. Was the request made on one occasion? A. Several occasions

Q. And did you go? A. No.

(To Court :

Q. Why? A. I had been once or twice to Jaffna and I did not care to go there again.)

Q. Now did you go anywhere in April for a holiday? A. Yes to Bandarawela for a week end.

(To Court :

Q. On what date? A. I arrived there on Good Friday morning.)

30 Q. How did you come to go there for a holiday? A. 1st defendant had returned from Jaffna about the 9th April and I had met him in his house and he said he was going up to Bandarawela and asked me whether I was going up. I said I would be taking a few days' leave and I would probably meet him there.

Q. You said he came to Colombo in April? A. Yes.

Q. About the 9th? A. Yes.

Q. And did you meet him? A. Yes I went round and met him.

40 Q. Did you do anything in the company of the 1st defendant that day? A. Yes. On the 9th he could not get out because he said he was expecting Mr. Weerasinghe a friend from Jaffna and he wanted me to accompany him to the Fort and the Pettah to do some shopping.

Q. When was that? A. On the 10th.

On the 9th I met him after my hospital work probably about 10-30,

No. 31
 Added-
 Defendant's
 Evidence
 Dr. Samahin
 examination
 —continued.

Q. Did you go out on that occasion? A. No, on the next day we went to the Fort and the Pettah and had a couple of drinks at the Bristol Hotel and then he wanted to see the Ludowykes as he had been away for a number of months.

Q. What happened? A. I took him round. They were staying at Dehiwala. We went there and after about 1½ hours we came back to Merlton. He said he was going up to Bandarawela that evening so I did not meet him after that.

Q. And you have already told the Court that the idea of going to Bandarawela you had discussed with him? A. Yes on the 9th. 10

Q. Did he or did he not know anything about your movements? A. He knew that I had decided myself to go up.

Q. Did you indicate how you proposed going? A. Yes, I was going by train and he said he was going by car with a friend.

Q. Then when did you leave? A. That same night by the night mail and I got there on the 11th morning.

Q. Did you know that the plaintiff had gone to Bandarawela? A. I inquired from the plaintiff whether 1st defendant had arrived there and she said no. That is when I went to Bandarawela.

Q. Did you know how long she had been in Bandarawela when you met her that day? A. She had been about three weeks. 20

Q. Why did you ask her whether 1st defendant had arrived? A. Because he told me he was going by car to Bandarawela.

(To Court :

Q. To which house did you go? A. I went at Bandarawela to Outschoorn's place. Plaintiff was not staying there. As soon as I went to Bandarawela I met her at the Club that morning at about 10 o'clock. I met her at the Tennis Club.

Q. Are you a member? A. All visitors at that time are temporary members.) 30

Q. And what did you do after that did you at any time meet the 1st defendant? A. Yes, when we were shopping.

(To Court :

Q. You heard the evidence that 1st defendant came to the town and met Merita and all these people? A. Yes that is correct we met near Millers.)

Q. Was the 1st defendant there with anybody else? A. Yes with Mr. Weerasinghe.

Q. Was anyone with you? A. Yes Mr. Perumal, the plaintiff and her sister. 40

(To Court :

Q. From the Tennis Club you walked there? A. Yes.)

I spoke to the 1st defendant.

Q. What were your relations with him, what was his attitude? A. He was quite cordial to me and very friendly.

Q. What happened after that? A. I asked him to have lunch with me at the hotel. He said he had already made arrangements to lunch at Welimada Resthouse and he was proceeding there.

Q. And then? A. About 10 or 15 minutes' later Mr. Weerasinghe and he got into the car and left.

Q. And what did you do thereafter? A. That day I went up to Solomons' boarding house. That was at lunch time, about 11 o'clock. I went there for lunch. I was invited for lunch by the plaintiff.

Q. Anybody else there? A. Yes, I met Col. Stanley Fernando and his wife and children.

Q. How did you have lunch? A. All had one table.

Q. And then? A. I went out. There were some friends of mine staying close to Solomons' Mr. & Mrs. Muttetuagama I went there for a game of cards.

(To Court :

Q. Did you go alone? A. No plaintiff and her sister too.)

Q. After that? A. I had an invitation to spend the evening at Diyatalawa at Major E. C. de Fonseka's at the camp. They had a social there. The plaintiff and her sister and I went there for the social.

(To Court :

Q. You took these ladies also? A. They also had been invited.)

We went there at about 4 or 5 or 6 in the evening and got back probably at about 10-30 or 11.

Q. How did you come back? A. Major Fonseka gave us his car to come back.

The ladies got down at Solomons and I had to go another mile and a half to Outschoorn's.

Q. You have heard the evidence of Dr. Babapulle, did you meet him at Outschoorn's? A. No, I did not know him. I heard his evidence.

(To Court :

Q. All lies? A. Yes.

Q. Did you know him before? A. No.)

Q. Did Mrs. Alles ever visit you at the Outschoorns'? A. No.

(To Court :

Q. All that he said was not true? A. No.)

Q. He says that late at night after dinner she walked into the house? A. That is not so I spent only two nights at Bandarawela and one night at Diyatalawa at the camp.

No. 31
 Added-
 Defendant's
 Evidence
 Dr. Samabin
 examination
 —continued.

(To Court :

Q. Were you in Bandarawela on the 13th April? A. No, I was in the train. I took the night mail and I worked in the General Hospital on the 14th. On the 13th night I was there till about 7 p.m. and after that at 7-20 I took the train.

Q. So at the time that Babapulle says a lady walked into your bedroom you were in the train? A. Yes.

Q. Is there a visitors' book at Outschoorns' boarding house? A. I do not know.

Q. Did you not sign a book when you went? A. I cannot remember I may have signed.

Q. When your bill was presented before you left did you not sign a register? A. I cannot remember. There may have been a book and I may have signed it.

Q. The Outschoorns will be able to prove very conclusively at what time you left? A. Yes.

Q. They have the data available to them to prove that at 7-20 on the 13th April you were not there? A. Yes.)

Q. You said you went to Diyatalawa, how did you spend the next day? A. I went up to Nuwara Eliya for the races. That would be 20 Saturday.

(To Court :

Q. Did the ladies go with you? A. We were taken there by Colonel Stanley Fernando in his car. Plaintiff was with me in the car.

Q. Was there anyone else? A. Yes the driver.

Q. When did you leave Bandarawela? A. On the 13th April.

Q. Did you attend to your normal duties on Monday? A. Yes I was in the General Hospital at 8 o'clock. That is on the 14th.

Q. Have you summoned the hospital authorities to produce the register showing your attendance? A. Yes. 30

(Mr. Wickremanayake interposes and says he does not think this is correct as he says he called the Superintendent of the Hospital to produce the document. Counsel for the 2nd defendant are unable to tell me how it is marked. In answer to me Mr. Misso for the 2nd defendant says his documents are with the proctor. I direct that the documents should forthwith be handed to the Court.

Mr. Wickremanayake says the relevant documents is 2D4. It is not available.)

Q. When you returned from Bandarawela did you carry with you any invitation from the plaintiff to 1st defendant? A. No. 40

Q. Do you remember the date of Mr. Alles' birthday? Do you remember when you resumed duties on your return from Bandarawela? A. Yes.

Q. In relation to that date can you say? A. About two days later. No. 81
Added-
Defendant's
Evidence
Dr. Samahin
examination
—continued.

Q. Mr. Alles had not returned to Jaffna? A. Yes I was aware.

Q. On his birthday did you meet him? A. Yes, I went to Merlton.

Q. Was there any celebration? Yes, quite a number of people had called there.

Q. Husband and wife were there? A. Yes.

Q. Who were the people who were there? A. The Namasivayams were there, the Ludowykes were there. Mr. Jayewickreme was there.

Q. And did you know when plaintiff had returned from Banadarawela? A. I met her that day.

Q. What happened at that party? A. There was a suggestion that we should go up to Bandarawela and Nuwara Eliya for the Easter.

Q. We meaning? A. Mr. Namasivayam, plaintiff, Miss Ludowyke and I.

Q. And go to Nuwara Eliya for the dance? A. Yes.

Q. Dance where? A. At the Grand Hotel, Nuwara Eliya. It was a big dance, the Easter dance.

Q. Who made the suggestion? A. I cannot exactly say but it happened when we were talking together.

Q. And what was the arrangement in regard to the 1st defendant? A. 1st defendant wanted the use of my car and he said he was taking Mrs. Namasivayam out to the pictures and dinner.

(To Court :

Q. Plaintiff had brought her baby? A. Yes.

Q. Merita had been left behind at Bandarawela? A. Yes.

Q. And you knew that the ayah was also there? A. Yes.

Q. Part of the arrangement was that plaintiff's baby was to be sent to Namasivayam's house? A. I was not aware of that.

Q. Mrs. Namasivayam was going to look after the baby in Colombo? A. I do not know that.

Q. And 1st defendant Mr. Alles asked you for the loan of your car to take Mrs. Namasivayam to the pictures and to dinner? A. Yes.)

Q. Do you remember an occasion when plaintiff went to Jaffna? A. Yes.

Q. What was the arrangement made in regard to the baby on that occasion? A. I do not know.

Q. You have told the Court what the arrangement was and I take it everybody was agreeable to that? A. Yes.

Q. There were no dissenting voices? A. No,

No. 81
 Added-
 Defendant's
 Evidence
 Dr. Samahin
 examination
 —continued.

(To Court :

Q. Did you dance at Nuwara Eliya? A. Yes.

Q. When was that? A. On the 19th Saturday.

Q. Who went to the dance? A. Plaintiff, I, Merita and Miss Ludowyke and Mr. Namasivayam.

Q. Did you know that the plaintiff was due back in Colombo on the 20th? A. We were coming back.

Q. From Nuwara Eliya after dancing what time did you leave the Grand Hotel? A. Early morning.

Q. At what time? A. 8 or 9 a.m. 10

Q. Then you went back to Bandarawela? A. Yes.

Q. And how did you come back to Colombo? A. We left Bandarawela after lunch and came to Colombo.

Q. In Mr. Namasivayam's car? A. Yes.

Q. That is on the 20th April? A. Yes.)

Q. Till what time did the dance go on? A. We left Nuwara Eliya at 8 or 9 in the morning and the dance was over at about 3 a.m.

(To Court :

Q. Till 8 or 9 where were you at Nuwara Eliya? A. We were resting at the hotel.) 20

Q. What do you mean by resting? A. We stayed at St. Andrews Hotel.

Q. Where did you stay? A. All of us were there at St. Andrews.

Q. That is the party that you described? A. Yes, the five of us.

Q. Did you use any particular room at St. Andrews Hotel? A. Yes we were given the loan of plaintiff's brother's room.

Q. One room? A. Yes.

Q. You all rested in one room? A. Yes. The place was quite full.

(To Court : 30

Q. Well then the ladies were sleeping and you were also in the same room? A. Yes, resting there.

Q. Namasivayam also? A. Yes. Plaintiff's brother went to another room for the time being.

Q. That is two men and three women? A. Yes.)

Q. When did you leave for Bandarawela? A. Left Colombo after lunch.

(To Court :

I left on the 18th afternoon at 2 or 2-30.)

Q. Was there any talk about the accommodation at Bandarawela 40 when you started?

(To Court :

Q. When you started did you know where you were going to sleep that night? A. No.

Q. Did you know what arrangements had been made for your sleeping that night? A. No.

Q. Well how did you distribute yourselves at Bandarawela? A. Dropped Miss Ludowyke at the Solomons.

Q. Do you know why that was done?

(Mr. Wickremanayake objects.)

10 Q. Tell us what happened? A. There was a discussion in the car, plaintiff wanted to take Miss Ludowyke to Jayewickreme's place. As Miss Ludowyke did not know the Jayewickremes in consequence of a discussion that took place the car was stopped at Solomons'.

Q. And what happened? A. We dropped Mr. Namasivayam at Mr. Victor Dias' and plaintiff and I went to Jayewickreme's house for dinner.)

Q. Has Jayewickreme told us what is true or false? A. His evidence is true.

Q. What rooms did you occupy? A. J in the sketch.

20 Q. And plaintiff occupied F? A. Yes.

Q. Two separate and distinct rooms? A. Yes.

Q. With a door between? A. Yes.

(To Court :

Q. Where was the lavatory and bathroom? A. Attached to J.

Q. So if plaintiff wanted to go at night she would have to go through your room? A. Yes.

Q. Where was the chamber pot? A. I do not know.)

Q. The inference that is sought to be drawn from the evidence led is that there were improper relations between you and the plaintiff on that 30 occasion. A. No none at all. I deny it.

Q. At any time in that house? A. Yes.

(To Court :

Q. Did the plaintiff go to wash her face that night? A. No.

Q. In the morning? A. I did a change, dressed up and I was in the verandah early morning.

Q. You had to go across plaintiff's room? A. No there is a door leading to the dining-room and to the verandah.

Q. On which side was the key in this inter-communicating room? A. I do not know. I did not try to open that door.

40 Q. Did you not suggest it as a man to a lady to lock herself in? A. I took it for granted that the door was kept locked,

No. 31
 Added-
 Defendant's
 Evidence
 Dr. Samahin
 examination
 —continued.

Q. Jayewickreme's evidence is that the bolt was on the lady's side, considering the circumstances did you not suggest to your friend the plaintiff do you mind pushing the bolt? A. No I did not make any suggestions.)

Q. There was also evidence that as a result of the position occupied by the two of you in that house there would be difficulty in regard to the dressing room what exactly were the arrangements, who came out first? A. That morning I got out from the room first.

(To Court :

Q. Do you usually wash your face before going to bed? A. Yes. 10

Q. Do you brush your teeth? A. Yes.

Q. Where did the plaintiff get her night dress from? A. She took a suitcase from Colombo.

Q. She took with her the same suitcase she brought with her from Colombo, she did not change it at Solomons'? A. No.)

Q. You heard the servant woman's evidence, Joslin's I think, her evidence is that plaintiff came into the room left her big suitcase there and took a small suitcase? A. I am not aware of that.

Q. Do you say it is untrue? A. I cannot say.

Q. At Solomons' plaintiff went in? A. Yes. 20

Q. Now to come to the evidence of the servants in Colombo. You heard the evidence of Alice, Joslin and Pabilis? A. Yes.

Q. Their evidence was to the effect that in the absence of 1st defendant you used to be frequenting Merlton and using the guests' room and staying the night? A. No.

(To Court :

Q. Did you sleep there during the day? A. No.)

Q. Have you ever slept there? A. No.

Q. Not by day or by night? A. No.

Q. Have you ever used that guests' room? A. Never. 30

(To Court :

Q. All that evidence of the servants is a tissue of lies? A. Yes.)

Q. They say that you and the plaintiff were like an *alut jodurwa*? A. I do not know much Sinhalese.

Q. At any time was there anything improper in your relations? A. None at all.

(To Court :

Q. During the whole of that period Merita was in the house and she can support you? A. Yes.

Q. If any misconduct took place it could not take place without her knowledge? A. Yes that is correct.) 40

Q. And another person who was at times in that house was her aunt? A. Yes.

(To Court :

Q. But Merita can prove the whole period spoken to by the servants? A. Yes.

Q. Are you calling her? A. She is not on my list.)

Q. Now you remember you had occasion to write to the 1st defendant about the illness of the plaintiff? A. Yes, in July.

(Shown P24). You remember you wrote and told 1st defendant that plaintiff had taken ill on the 9th July? A. Yes.

Q. And the doctor had to be called in? A. Yes. Dr. Frank Gunasekere.

Q. You heard his evidence? A. Yes.

Q. Is that correct? A. Yes.

Q. You remember when the 1st defendant returned from Jaffna on the 9th August? A. Yes.

Q. That was in the August race week? A. Yes.

Q. Did you meet the 1st defendant on that occasion? A. Yes on the 9th. I went to the races with him.

20 Q. Did you meet him at the station? A. I do not think so.

Q. Did the plaintiff go to the races? A. I believe she did but I cannot be definite.

(To Court :

Q. That was the day the 1st defendant had returned from Jaffna? A. Yes.

Q. He had started from Jaffna on the 8th and had arrived at Colombo on the 9th and you went to the races at what time? A. 1 o'clock or half past one.

Q. Do you know at what time he arrived in Colombo? A. Yes.

80 Q. Anyway he had only a few hours in Colombo before he went to the races? A. Yes.)

Q. Do you know when 1st defendant returned to Colombo for good from Jaffna, since his return to Colombo what were your relations with him? A. Very friendly.

Q. Was he as he was before? A. As a matter of fact I used to go very frequently there because up to the 22nd October I was on medical leave for four months and I had the whole day more or less to myself.

Q. You had no reason to think that he had anything against you? A. None at all.

40 Q. Was it the same, getting about together, hotels, dances, etc.? A. Yes.

No. 81
 Added-
 Defendant's
 Evidence
 Dr. Samahin
 examination
 —continued.

Q. You have heard the evidence of the 1st defendant, did he on any single occasion speak to you in regard to his wife? A. Never.

Q. Caution you or say anything like that? A. Never, not on any single occasion.

Q. Did you have any reason to think that 1st defendant had any suspicions against you? A. None at all.

Q. Now you remember the Police dance? A. In 1941. Yes.

Q. That police dance is rather a big social event? A. Yes it is.

Q. Have you always been in the practice of attending it? A. Every year when I am in Colombo I attend it. 10

Q. On how many occasions? A. For about four or five years.

Q. It is a subscription dance? A. Well, except the last year when the subscriptions were in aid of charity it used to be by invitation. In 1941 we had to pay.

Q. And were you going on this occasion? A. Yes, I was going.

Q. Did you know what arrangements there were in regard to the Alles' about it? A. Earlier or that day.

Q. Round about that time? A. That evening I dropped in at their house and I asked them whether they were going to the dance. 1st defendant said that he was not going as he had some work to attend to 20 and asked the plaintiff to go along with me to the dance if she felt like doing so. She said she would not go without the 1st defendant. I was there for a short time and I left.

Q. Nothing definite was agreed upon? A. Not at that time.

Q. You were in any case going? A. Yes.

(To Court :

Q. You were not taking the Ludowykes on this date? A. I was meeting them at the dance. I had arranged to meet them there.)

Q. You had arranged to meet them there and you knew that you would have your dances? A. Yes. 30

Q. Where did you go after leaving the Alles'? A. Orient Club.

Q. About what time was it? A. 7-30.

Q. What did you do after that? A. I was there till about 9-30 or 10.

Q. Were you playing bridge? A. Billiards.

The dance usually starts at 9-30 but I always go to the dance late. I had to go back and change. I was at the Club till 9-30. Then plaintiff rang me up at the Club. She said that her husband had changed his mind and was going to the dance and she said that the 1st defendant wanted to know whether I would take her to the dance as he was going 40 with some of his friends. Those friends were the Namasivayams.

(To Court :

Q. Did it not strike you as peculiar that the husband should go with the Namasivayams and that you should take the wife to the dance? A. It did not strike me as peculiar because I knew that plaintiff and the Namasivayams were not friendly and she would not join their company.

No. 31
Added-
Defendant's
Evidence
Dr. Samahin
examination
—continued.

Q. Do you know from what time this estrangement had lasted? A. From about April, 1941.

Q. What was the trouble? A. There was a scene in plaintiff's house. Namasivayam objected to a guest of the house speaking to his wife and some words passed and in consequence of that there was bad feeling between them and the plaintiff.

Q. What did you decide to do? A. I said I was going home to change and I would pick her up.

Q. Do you know in what car 1st defendant went? A. No.

Q. At what time did you pick her up? A. At about 10 o'clock. The dance was in the Town Hall.

Q. Did you see the 1st defendant there? A. Yes.

Q. Anything in his manner? A. He was quite friendly with me and we had drinks together at the bar.

20 Q. Can you remember how many drinks? A. I cannot say.

Q. Did he stand you drinks? A. Yes.

Q. Do you know whether he danced with the plaintiff? A. I saw him dancing with his wife several times.

Q. With whom did you dance? A. With the plaintiff and the two Misses Ludowykes.

Q. Was there anything on that occasion to indicate in 1st defendant's manner that anything had gone wrong? A. None at all.

Q. On the 7th of December there was a carnival? A. Yes.

30 Q. How did you come to be at the carnival? A. As usual I went there in the morning and had lunch with them, the Alleses. 1st defendant was there and he was chatting to me.

Q. Did you have a drink with him? A. Usually we have it. I had lunch there and usually we go to the promenade concert or a dance and on this day we changed our venue and decided to go to the Silver Wings Carnival.

Q. Who went with you? A. The plaintiff.

Q. What about 1st defendant? A. He was going with his friends

Q. Being? A. The Namasivayams.

No. 31
 Added-
 Defendant's
 Evidence
 Dr. Samahin
 examination
 —continued.

Q. This was all arranged?
 two or three hours.

A. Yes. We spent at the carnival

Further hearing on Monday.

Sgd. R. F. DIAS,

D. J.

18th January, 1942.

Counsel as before.

T. S. SAMAHIN, affirmed.

Q. You have stated you are the Port Health Officer, Galle, apart from that?
 A. I am the Police Surgeon, Galle, Medical Officer in charge of the House of Observation, Galle, Medical Officer in charge of the I. D. H. and the Medical Officer in charge of the Venereal Diseases Clinic.

Q. Is it usual for you to take a holiday round about Easter?
 A. I usually go to Nuwara Eliya and I have done that for many years. I usually stay for a week or 10 days.

Q. Was it possible to get that amount of leave in 1941?
 A. I had applied for 10 days' leave but I was refused owing to the malarial epidemic and I was given only three days.

Q. You heard the evidence of Dr. Frank Gunasekere, he says that when he was called in to attend on Mrs. Alles that you were present when that examination took place on one occasion?
 A. Yes on the 9th July.

Q. Will you tell the Court how you came to be present?
 A. I had dropped in there casually and I found the plaintiff was ill and I was informed that Dr. Gunasekere was being called in and he was expected very shortly.

Q. He was not your consultant?
 A. No.

Q. Did you remain there?
 A. Yes.

(To Court :

Q. In the room?
 A. I was in the house.)

30

Q. When the doctor came there did you go inside the room with Dr. Gunasekere?
 A. Yes.

(Mr. Wickremanayake objects to leading questions. I agree).

(To Court :

Q. Dr. Gunasekere's evidence is that you were in the room is that correct or not?

(I point out to Dr. Frank Gunasekere's evidence which was given when Mr. Obeyesekere was not in Court, that Merita was in the verandah, that someone called him from the room and he went inside. 2nd defendant was in the room and plaintiff was on the bed.)

40

(I uphold Mr. Wickremanayake's objection. Leading questions must not be put.)

Q. Why were you inside the room? A. I had just gone in a few minutes earlier and I was talking to the plaintiff.

Q. Why did you remain in the room while Dr. Gunasekere examined the patient? A. I was a friend of the family and I did not think there was anything objectionable in my being there.

No. 31
Added-
Defendant's
Evidence
Dr. Samahin
examination
—continued.

(To Court :

Q. Have you had occasion to examine married women as a doctor?

A. Yes.

Q. Do you allow the husband to remain or do you wait for him to leave? A. I would not ask him to leave and usually he remains.)

Q. You said you were a friend and nobody objected to your remaining? A. No.

(To Court :

Q. Now this examination what part of the body was examined? A. The abdomen.

Q. The naked abdomen? A. Yes.

Q. And the naked back of the abdomen? A. Yes.)

Q. Did the lady have on a night dress? A. She was covered with a sheet and only that portion was exposed.

Q. She was covered with a sheet and was the examination done while she was covered with the sheet? A. Yes.

(To Court :

Q. Her clothes were raised up? A. Yes.

Q. You saw the naked abdomen? Yes.)

Q. Did you examine her? A. No.

Q. Did you know anything of the symptoms? Yes she told me she had fever and she had severe pain.

Q. Dr. Gunasekere says that he expressed an opinion that you did not quite agree with him is that so? A. I asked him whether it could not be some other disease.

(To Court :

Q. What business was it for you to agree or disagree? A. As I had seen some of the symptoms and as a doctor I thought there might be the possibility of some other condition.

Q. For instance? A. Appendicitis.)

The symptoms were vomiting, fever and pain in the abdomen.

Q. Are those associated with appendicitis? A. Yes.

(To Court :

Q. What did Dr. Gunasekere say when you differed and disagreed with him? A. He said nothing.

No. 31
 Added
 Defendant's
 Evidence
 Dr. Samahia,
 examination
 —continued.

Q. Why did you interfere between patient and doctor? A. I had known Dr. Gunasekere myself and I had merely a conversation with him, not that I disagreed with him entirely, I merely suggested the possibility of something else.)

Q. In what capacity were you present? A. As a friend.

Q. Why was not Merita in the room? A. I do not know. She was in the verandah.

Q. Was there an ayah present? A. Yes.)

Q. Where was the ayah? A. In the room.

Q. You went to Bandarawela for a holiday on Maundy Thursday? 10
 A. I left Colombo on Thursday, that is the 10th April.

Q. Did you make arrangements for your stay at Bandarawela? A.
 Yes.

Q. Where were you going to stay? A. At the Outschoorn's.

Q. How did you make the arrangement? A. Before I went I made the arrangement. I wrote to Mrs. Outschoorn and asked her to keep me a room.

Q. Did they have a boarding house? A. It is a recognised boarding house.

Q. Is there any kind of notice? A. Yes a notice board outside 20 bearing the words "Guests' House".

I went by the night mail on the 10th April.

Q. Before you left did you know whether there was a room for you at the Outschoorn's place? A. Yes, there had been a reply to my letter.

Q. You arrived there on the 11th morning at what time? A. About 8 or 8-30.

Q. When you arrived there at the station what did you do? A. I went to the Outschoorn's. I went walking it was close by. They live 20 or 30 yards away from the railway station. Quite close. 30

Q. Had you a bag? A. Yes a suitcase. The porter carried the bag.

Q. Once you arrived at the Outschoorn's what did you do? A. I had a wash, changed and I was there for a short time and went out.

Q. Did you have a meal? A. I had my breakfast in the train. About 9-30 I went to the Club. The Club is in front of the Outschoorn's house and I walked across.

Q. At the Club whom did you meet? A. The plaintiff and her sister and quite a number of friends.

Q. Did you meet anyone else? A. Mr. Perumal. 40

Q. Is he a friend of yours? A. Yes.

Q. What is he? A. An Excise Inspector;

Q. Stationed where? A. He was at Bandarawela for a long time and now at Ambalangoda. He was at the time on leave.

Q. You stayed for sometime at the Club and then went out shopping?
A. Marketting, to buy some vegetables.

Q. Who and who? A. The plaintiff, her sister, Mr. Perumal and myself.

Q. What did you want the vegetables for? A. Those were to be sent down to Colombo.

Q. How did you go to the bazaar? A. Walking.

10 Q. At the bazaar did you meet anybody? A. Yes, 1st defendant and a friend.

Q. Where did you lunch on the 11th? A. At the Solomons'.

Q. How many tables are there at the Solomons'? A. One big table and everybody sits at that table, about 10 or 12 people.

Q. After lunch what did you do? A. I walked up to the house of some people who were staying quite close by—Mr. Muttetuagama.

Q. Did you go to a party that evening? A. Yes to Diyatalawa. On the invitation of Major Fonseka, that was at about 6 p.m.

Q. Who else went? A. Plaintiff, her sister and I went.

20 Q. How did you go? A. In the Major's car.

Q. Till what time were you there? A. Till about 11 o'clock.

Q. In whose car did you come back? A. Major Fonseka's. The driver drove the car.

Q. When you arrived at Bandarawela where did you go? A. I went to the Outschoorn's.

Q. On the 12th April what did you do, what time did you leave for Nuwara Eliya? A. At about 8 a.m.

Q. At what time was the races? A. 10-30 and I returned after the races to Bandarawela at 5 or 5-30. I lunched that day at St. Andrew's,
30 Nuwara Eliya. Col. Fernando, plaintiff and myself had lunch there.

Q. That evening what did you do? A. I walked into the Club and then I met some of my friends there and had a few drinks and a game of cards. Mr. Perumal had a car and I knew that the plaintiff wanted to get back to Mrs. Jayewickreme's as her evening clothes were there. Plaintiff and her sister were going to the dance that night at the hotel. They wanted to go to Jayewickreme's for their dinner and a change. The dance was at the Bandarawela Hotel.

(To Court :

Q. Why did the plaintiff have to go to Jayewickreme's for her dinner
40 and a change when she was already living at Solomons'? A. Solomons place was 1½ miles away from the town and Mrs. Jayewickreme was staying quite close by and she had brought her things to that place.)

Jayawickreme's house is in town,

No. 31
 Added-
 Defendant's
 Evidence
 Dr. Samahin
 examination
 —continued.

Q. They had left their evening clothes there, plaintiff and her sister and they were going there to dine and change? A. Yes.

Q. And from there go to the dance? A. Yes. I dropped them at the house.

(To Court :

Q. Did you see Errol Jayewickreme there that day? A. No.)

Q. How did you go to Jayewickreme's? A. Mr. Perumal's car. Perumal I and these two ladies went in the car and the ladies got down there and we came back to the Club and we spent a little more time there and Perumal and I were both going to the dance and I asked him to wait a little while I got ready and came. Perumal had to go home to dress. He stays next door to Jayewickreme's and we picked up the two ladies and came for the dance.

Q. How long were you at the dance? Till about 12 o'clock.

Q. How did you return? A. In Perumal's car.

Q. Were you dropped at your respective boarding houses? A. Yes.

Q. Where did the ladies spend the night? A. At Mrs. Jayewickreme's.

Q. That is the 12th night, plaintiff and Merita? A. Yes. 20

Q. Do you know why they stayed at Jayewickreme's?

(Mr. Wickremanayake objects. Objection upheld.)

Q. Where did you sleep that night? A. Outschoorn's.

Q. Who was dropped first? A. I because I was staying close to the hotel.

Q. I pass on to the 13th April, what did you do that morning? A. I went to the Club as usual. I lunched at Mrs. Jayewickreme's.

Q. With whom? A. The plaintiff her sister and myself.

(To Court :

Q. And Mrs. Jayewickreme? A. Yes. 30

Q. Errol was not there? A. No.)

Q. When did you return to Colombo? A. On that Sunday night. I came by train. The train left Bandarawela at 7-20. I reached Colombo on the 14th morning.

Q. You went to the hospital on the 14th. You point to 2D4 page 82? A. Yes, I was on duty till 11-30 or 12.

(To Court :

Q. Is that entry written by you? A. Yes.

Q. When was that written? A. It was written that week.

Q. Not written contemporaneously? A. We are supposed to enter it daily. 40

Q. When did you in fact enter it? A. Once in two or three days).
 (The entry reads: "10—12th on three days' leave" and the entry is signed by the witness. "14th. Hour of arrival at hospital 8 a.m. Hour of departure from hospital, 12 noon". Duration of visit, four hours).

No. 81
 Added-
 Defendant's
 Evidence
 Dr. Samahin
 examination
 —continued.

The 13th was my off Sunday. I work every fourth Sunday in the month. There are four anesthetists attached to the hospital and each takes one Sunday off.

Q. When has Dr. Willenberg initialled that before the 14th? A. 5th April.

10 Q. When has he next initialled it? A. 19th April.

Q. How frequently does that book go to the Medical Superintendent?
 A. Once a week.

Q. When you returned from Bandarawela when did you next meet the 1st defendant? A. I cannot be sure on what day I met him after that. It would be a day or two after I returned.

Q. Where did you meet him? I went to his house and met him.

Q. I suppose one of your usual visits? A. Yes.

Q. How were you treated? A. Quite cordially.

Q. Was he quite friendly? A. Yes.

20 Q. Do you remember his birthday? A. Yes on the 17th.

Q. When did the party actually leave? A. On Friday afternoon the 18th at about 2-30.

Q. In Mr. Namasivayam's car? A. Yes.

Q. Who drove the car? A. Mr. Namasivayam's chauffeur.

Q. When you left Colombo had you made arrangements for your own stay? A. No.

Q. What did you intend to do? A. I wanted to go to the hotel or to Outschoorn's if they had accommodation for me for the night.

30 Q. Have you friends in Bandarawela? A. There were some friends.

(To Court :

Q. Did you get leave? A. Yes I had taken leave.)

Q. Did you know where the two ladies were going to stay? A. Jayewickreme's.

Q. Were you aware of that? A. Yes.

Q. At what time did you reach Bandarawela? A. About 7-30 or 8.

Q. Where did you first stop at Bandarawela? A. Solomons' plaintiff got down there and Miss Ludowyke.

40 Q. Did you see any bag or suitcase taken in? A. Yes, Miss Ludowyke's bag.

No. 31
Added-
Defendant's
Evidence
Dr. Samahin
examination
—continued.

Q. Plaintiff's bag was not taken out? A. No.

Q. You swear that? A. I saw Miss Ludowyke's bag taken out.

Q. Did you get down from the car? A. Yes, but I did not go inside the house.

Q. Did Namasivayam get down? A. He was seated in the car.

Q. Do I understand you to say that the two ladies went inside alone?

A. Yes. They had to shout for a boy to get a lantern because there are a number of steps to the house.

Q. What happened who returned from Solomons' house? A. Only the plaintiff. 10

Q. Did the plaintiff tell you anything? A. Yes.

(In answer to me Mr. Ameresekere says the plaintiff will be a witness.)

Q. What? A. Plaintiff say that Miss Ludowyke was reluctant to go to Mrs. Jayewickreme's as she did not know her and as Merita was staying at Solomons' she preferred to stay with Merita because both of them were of about the same age.

Q. So? A. We proceeded in the car.

Q. Where was the plaintiff going to sleep that night? A. At the Jayewickreme's.

Q. From Solomons where did you go next? A. We dropped Mr. 20 Namasivayam at Victor Dias'.

Q. Was he staying there? A. Yes.

Q. And from there where did you go? A. To Jayewickreme's.

(To Court :

Q. Did you know Jayewickreme's before this? A. Yes.

Q. Is Monty Jayewickreme a friend of yours? A. Yes I had known him for five or six years and I know his wife too.

Q. Did you know her well? A. Yes.)

Q. Do you know where the car was garaged that night? A. At Jayewickreme's. 30

Q. You heard the evidence of Errol Jayewickreme, it is correct that you stayed there that night? A. Yes.

Q. Was any objection raised to that? A. No.

(To Court :

Q. And you saw nothing wrong? A. No.)

Q. Did any misconduct take place there that night? A. No, not at all.

Q. It has been said there was an inter-communicating door? A. Yes.

Q. Do you know whether that door was locked or closed? A. It 40 was closed I do not know whether it was locked.

Q. You did not try the door? A. No.

(To Court :

Q. At what time did you get up the next morning? A. At about 7.

Q. Had you a suitcase? A. Yes.

Q. A tooth brush and necessary apparatus? A. Yes.

Q. Had the plaintiff a bag? A. Yes.)

Q. Your bag was in your room? A. Yes.

Q. You say you were dressed and came out in the morning? A. Yes.

10 Q. How long after you dressed and came out did you see the ladies?
A. About an hour and half later.

Q. Did you go to Nuwara Eliya? A. Yes on the following day, 19th.

Q. Whose room was it that you rested in? A. Noel de Costa's room.

Q. Was any other room available? A. No.

Q. I suppose you were in evening clothes when you began to dance when did you change?

(To Court :

20 Q. You went to the dance in short coat or tails? A. Short coat.

Q. When did the short coat become a white suit? A. In the morning.

Q. Where? A. In Noel de Costa's room.

Q. The other gentleman where did he change? A. In the same place.

Q. Who was there when you made your change? A. Nobody else.

Q. The ladies where did they change? A. In the bathroom or adjoining room they took their clothes and went out.

30 Q. Saying they were going to the bathroom? A. Yes.

We reached Colombo at about 7 o'clock on Sunday, that is the 20th.

(To Court :

Q. How did you come back? A. In the same car Mr. Namasi-vayam's car driven by the same driver.

Q. Plaintiff and Merita also came in the car? A. Yes.

Q. Also Miss Ludowyke.? A. Yes.)

Q. When you arrived in Colombo where did you go first? A. Merlton.

Q. Who got off there? A. Plaintiff, Merita and Miss Ludowyke.

40 Q. And you? A. I too got down because my car was there.

No. 31
 Added-
 Defendant's
 Evidence
 Dr. Samahin
 examination
 —continued.

I went home in my car.

Q. Was the 1st defendant there? A. He was not there.

Q. He had gone to Jaffna? A. Yes.

Q. You have been examined about the Police dance, there is one question I want to put to you about that. What time did you leave the dance? A. At about 3 o'clock.

Q. Did you leave alone? A. No I left with the two Ludowyke girls. Three of them the mother and the two girls, plaintiff and myself.

(To Court :

Q. You went to the dance with whom? A. Plaintiff and I. I had arranged to meet the Ludowyke's there. 10

Q. And you left with Mrs. Ludowyke the Misses Ludowyke and plaintiff? A. Yes.

Q. And from there where did you go? A. We dropped the plaintiff at her house Merlton and went to Dehiwala to drop the Ludowykes and from there went home.

Q. You remember the Medical dance of that year? A. Yes on the 19th December.

Q. Had you anything to do with that dance? A. I was one of the organisers. 20

Q. You were going to the dance yourself? A. Yes.

Q. Had you asked anybody to come to the dance? A. Yes plaintiff and her husband and the Ludowykes.

Q. Merita? A. Yes, and Merita too.

Q. Had they all agreed to go? A. Yes all agreed.

(To Court :

Q. Including the 1st defendant? A. Yes.)

On the 19th December I came to Merlton at 8-30.

Q. Why? A. Because we had arranged to meet at Merlton and go to the dance. 30

Q. Where were you to dine that night? A. At Merlton.

Q. Had you been invited? A. Yes.

Q. By whom? A. 1st defendant.

Q. How were you dressed? A. In evening clothes.

Q. Short coat? A. Yes.

Q. When you went to Merlton had the Alles' had their dinner? A.

No.

Q. Did you have dinner? A. Yes with them.

Q. Did you have a drink? A. Yes.

Q. Who stood that? A. 1st defendant.

(To Court :

This was a Friday and they had some string-hoppers.)

Q. Was the 1st defendant dressed? A. No he was not.

Q. How was he attired? A. Sarong and shirt.

Q. Did you not say what is this? A. I asked him.

Q. Did you expect him to be ready to go to the dance? A. Yes.
He said he had some urgent work to attend to and asked me to excuse him.

Q. He had some papers in front of him? A. I think it was some
10 legal work.

Q. Did you press him to come to the dance? A. I tried to
persuade him.

(To Court :

Q. Did you pay for the tickets? A. Yes, Rs. 10 for a couple or
Rs. 7 for a gentleman and Rs. 5 for a lady.

Q. If you had only taken the plaintiff? A. It would have cost
me Rs. 10.

Q. If you were taking the husband and wife? A. Extra Rs. 7.

Q. Then you had lost Rs. 7? A. No I can return the tickets
20 and get a refund.)

Q. Was the lady dressed? A. Yes.

Q. Merita? A. Yes.

Q. Did you sit for dinner? A. Yes and Mr. Noel de Costa was
also there.

Q. Was he going to the dance? A. Yes he was dressed.

Q. Did the Ludowykes' come? A. While we were at dinner they
turned up.

Q. This dinner party was quite a cordial affair? A. Yes.

Q. How were you treated that day? A. Quite well.

30 Q. Any difference to the previous treatment? A. None at all.

(To Court :

Q. You were treated as usual and in quite a friendly way, you noticed
nothing peculiar? A. No.)

Q. Who came with the Ludowykes' party? A. Mr. & Mrs.
Ludowyke and the two daughters.

Q. How did they come? A. In Ludowyke's car.

Q. Who among them were going to the dance? A. The mother
and two daughters.

Q. The father? A. He does not dance at all so he thought it
40 better to go home.

Q. Who went to the dance? A. 7 of us, Mrs. Ludowyke and the
two Misses Ludowyke, I, plaintiff and her sister and Noel.

No. 31
Added-
Defendant's
Evidence
Dr. Samahin
examination
—continued.

Q. How did you go? A. Noel, Merita and one Miss Ludowyke went in Costa's car. That was a smaller car and the four of us went in my car.

(To Court :

Q. Plaintiff went in your car? A. In my car.

Q. Who else? A. Mrs. Ludowyke and also one Miss Ludowyke in my car.

Q. Till what time were you at the dance? A. Till 4 o'clock I think. We were there a little longer after the dance was over. That was because I was one of the organizers and we stayed and had a few drinks. 10 From the dance I brought the plaintiff and Merita in my car. Noel took the Ludowykes as he was staying towards Bambalapitiya or Colpetty.

Q. You say you came with the plaintiff and Merita what happened then? A. I dropped them at the gate because the gates are usually kept closed.

Q. What is your practice when you used to go with the plaintiff and Merita? A. I stop my car at the gate and plaintiff and Merita get down and walk into the house and switch on the verandah light and then I move off.

Q. Did that happen on that night? A. Yes. 20

Q. Why are the gates kept closed? A. Because there are a number of dogs there.

Q. What were the dogs? A. I cannot say.

Then I went home.

Q. Did you come to know that Mr. Alles had left the house on the 19th? A. Yes I heard about it on the 20th morning.

Q. From whom? A. The plaintiff.

(To Court :

Q. That was your birthday? A. Yes.)

Q. You heard the allegations of misconduct against you do you deny 30 them? A. Yes every one.

(To Court :

Q. Both at Colombo and Bandarawela? A. Yes.)

Q. How did you treat the plaintiff? A. As a friend.

Q. And as the wife of a friend? A. Yes.

Cross-examined by MR. AMERASEKERE

Q. You remember the illness of the plaintiff in July did you sit on her bed and keep on conversing with her? A. No.

Cross-examined by MR. WICKREMANAYAKE

Q. You have made a point of the fact that you had met the plaintiff 40 before 1940 at the Senanayake's and at Dr. Alles'? A. Yes.

Q. Did you ever dance with the plaintiff before 1940? A. No.

No. 31
Added-
Defendant's
Evidence
Dr. Samahin
Cross-
examination

Q. Not until after the operation? A. Long after the operation.

Q. You have heard Mr. Alles' evidence he was operated on in January and he did not go about for about six months after that and it was after that you met at the G. O. H.?

(To Court :

Q. When did you become an ardent dancer? A. For a long time for about 15 years.

Q. In the same way as in 1940 1941? A. Yes.

Q. Did you never dance with the plaintiff till long after the operation on the 1st defendant? A. Yes.)

Q. Certainly after July, 1940? A. Yes.

Q. Nor did you visit the plaintiff's house prior to July, 1940? A. No I had not.

Q. Despite the fact that you had met the plaintiff and her husband frequently at Dr. Alles' on occasions and things like things like that? A. Yes.

Q. At plaintiff's house there used to be cards frequently? A. I used to go there only for those occasions. It was not to plaintiff's house but Dr. Alles'.

Q. After you began to visit plaintiff's house there used to be card parties and you used to join? A. Yes.

Q. They used to come to Dr. Alles' also for cards? A. Yes. I used to play and there used to be others also who joined.

Q. In spite of these frequent meetings at Dr. Alles' you neither danced with the plaintiff nor visited her at her house? A. I used to be a frequent visitor at Dr. Alles' and on one or two occasions I met the plaintiff there.

Q. How frequently did you meet them there? A. I cannot remember.

Q. Your evidence was that you were a frequent visitor at Dr. Alles' and you had met them on some of those occasions? A. Yes.

Q. Now you reduce it to one or two? A. Some.

Q. Having met them at Alles' you got very friendly with them only after the middle of 1940? A. After I met them at the dances.

Q. You admit that at the end of that year you were very close friends? A. Yes.

Q. You went to her birthday party in November? A. Yes.

Q. You saw the new year in with them? A. Yes.

Q. And in between you used to be there frequently? A. Yes.

Q. You remember the Christmas morning, the midnight mass and supper? A. Yes.

Q. You did not attend that supper? A. No.

No. 31
 Added-
 Defendant's
 Evidence
 Dr. Samahin
 Cross-
 examination
 —continued.

Q. Is there any reason why 1st defendant tried to take you to that supper when you did not go? A. I cannot say.

Q. He came in his shirt and sarong to the Orient Club? A. When he came it was very late and I was engaged in a game of cards.

(To Court :

Q. Had you lost? A. Yes, I was trying to make it up.

Q. On 1-2 Mr. Alles went to Jaffna and by that time you were close friends and he asked you to look after the plaintiff? A. Yes.

(To Court :

Q. What do you mean by looking after, how do you construe that 10 word, what were the limitations? A. He expected me to do what a good friend of the family would do.

Q. Just make inquiries? A. And help them in any way they wanted.)

Q. On 1-2 he was away. How frequently did you visit the house then? A. Two or three times a week.

Q. You said you had to take her round in your car because they had no car, was any other car available? A. Possibly I do not know.

Q. Dr. M. de Costa's car was sometimes used? A. I have not seen her in that car. 20

Q. And you went round at her invitation and took her to dances? A. Yes.

Q. How frequently? A. Once or twice a month.

(To Court :

Q. Was that part of the looking after taking her to a dance? A. I did not take her out alone, both she and her sister.)

Q. You never took the plaintiff alone? A. Never.)

Q. You heard the evidence of the servants, sometimes the two ladies went together and sometimes you went alone with the plaintiff? A. That is false. 30

Q. Apart from dances you did not take them out at all? A. To promenade concerts and sometimes shopping.

Q. The promenade concerts were on Sundays? A. Yes, only on Sundays.

Q. Throughout the rest of the week you did not take them out? I am referring to the evenings? A. No.

Q. You never took the plaintiff herself out on any day? A. No.

Q. It is not true that you used to come to the house daily and at other times of the day? A. No.

Q. You will admit that these servants were the servants in the 40 house? A. Yes.

Q. Do you deny you ever spent any time in that spare room ?
I have never been to that room.

A. No. 31
Added-
Defendant's
Evidence
Dr. Samahin
Cross-
examination
—continued.

Q. Either before or after the 1st defendant left the house ?
Never. Up to date I have not been to that spare room.

(To Court :

Q. You never slept in it or wore a sarong in that room ? A. No.)

Q. Could you tell me what the panes of glass in the door between
the spare room and the dining room are ? A. I cannot be certain.

Q. Did you instruct your counsel that the glass in that room was
10 plain glass ? A. The door had glass panes.

Q. Did you instruct your proctor as to what the glass was ? A. No.

Q. You remember Pabilis being cross-examined as to whether that
was frosted glass or plain glass ? A. Yes.

Q. Up to date you do not know whether it is frosted glass or plain ?
A. No.

Q. The servants told us that you were in that house twice or thrice
a day, mornings, afternoons and night ? A. No.

Q. Do you suggest you had hospital work to prevent your going ?
A. I used to be at the Club most of my time.

20 Q. Hospital ? A. Whenever there was work, morning and even-
ing and any other urgent calls.

Q. In the hospital there were two records kept of the work done by
you and your attendance ? A. No.

Q. One is the personal diary ? A. Yes.

Q. That is the diary you enter up yourself merely setting out the
hour you go to the hospital and the hour of departure ? A. Yes.

Q. There is also an anæsthetist's record ? A. Yes.

Q. That would contain the operation that was performed, the period
during which you were in the theatre as anæsthetist ? A. No the
30 duration of the operation.

Q. That would really be the operations in respect of which you
anaesthetize ? A. Yes.

Q. Throughout the duration of that operation you would have to be
there ? A. Yes.

Q. It would show how long you were there in the theatre and also
state who the surgeon was ? A. Yes.

Q. And it would be an exact record of the time you were actually
working there ? A. No except the periods.

Q. Do you admit that during the whole time of the operation the
40 anæsthetist would be present ? A. Yes.

No. 31
 Added-
 Defendant's
 Evidence
 Dr. Samahin
 Cross-
 examination
 —continued.

Q. It would also show the name of the surgeon? **A.** Yes. It would give the serial number, date, patient's name, name of the surgeon, nature of the operation, duration of the operation, what anaesthetic was used and the quantity.

Q. That is a matter that could be checked up with other records in the hospital, for instance that a particular patient was operated on for a particular thing on a particular date? **A.** Yes.

Q. This particular book 2D4 contains only entries in your handwriting of the time of arrival and departure.....

(Mr. Obeyesekere objects. I think the question can be put.) 10

Q. Signed by Dr. Willenberg once a week? **A.** Yes.

Q. How many such registers has he got to sign? **A.** About 20.

Q. Are you suggesting that he made inquiries to find out whether you were there at that time before he signed? **A.** If I was not there the surgeon would complain about it.

Q. He has to try to find out from other sources whether you were there at that particular times? **A.** He has made entries in this book in the margin to show that he has checked it. I point to page 51. The entry is "Diary not entered up. Please do so."

Q. That entry shows that you were at least on several occasions not 20 entering the diary from day to day? **A.** I have said I entered it about twice a week.

Q. And when this went up to Dr. Willenberg so long as it was entered it was alright and he signed it? **A.** Yes.

Q. The anaesthetist's record is missing Dr. Willenberg says? **A.** If he says so, I do not know. There was no correspondence between the D. M. & S. S. and myself about it.

Q. Will you tell me how this book came to be given to Dr. Willenberg by your lawyers? **A.** Because I had given it to my lawyers. I took it away as soon as I got the summons in this case. 30

Q. Did you ask Dr. Willenberg before you took it? **A.** No.

(To Court :

Q. Do you admit this is a hospital record? **A.** Yes.)

Q. You heard Dr. Willenberg say that no doctor had the right to remove it without his permission? **A.** I am still under the impression that I can remove my personal book.

Q. Did you inform Dr. Willenberg that you took it away? **A.** No. Six months after I left the hospital I went to the hospital and removed the book.

Q. You were not even an officer employed there then? **A.** No. 40

Q. You cannot enter the theatre then? **A.** This was in the staff room.

Q. To which you had no right to go? A. Officially yes, I can go to see any surgeon at any time. I went there and asked the peon for the book and he gave it to me and I took it away. Even six months after I had left the hospital it was lying on the staff table.

No. 31
Added-
Defendant's
Evidence
Dr. Samahin
Cross-
examination
—continued.

(To Court :

I do not know how the anæsthetists' record is missing.

Q. Will you agree if we had the anæsthetists' record one would be able to check up your statements in this book by reference to that? A. No because the time is not entered there only the duration. The time is 10 entered in 2D4.

Q. But we would be able to find out whether you did any work in the hospital on the 14th? A. Yes.)

Q. And also there are the bed-head tickets? A. I had nothing to do with the bed-head tickets.

Q. The anæsthetist's record would enable one to find out what bed-head tickets should be looked at and from the tickets the time the operation took place? A. I suppose so sometimes.

Q. So without the anæsthetist's record you cannot get at the bed-head tickets? A. There is the surgeon's operation register. That 20 contains all those details.

Q. You said you had no communication from the D. M. & S. S. Had you any from Dr. Willenberg? A. He wrote to me three letters and I replied by one in answer to all three.

(Shown D8 of 30-x-42.)

Q. In October, 1942, where were you? A. In India.

Q. In that letter Dr. Willenberg says that Dr. Samahin has been written to in connection with the missing documents? A. He had written asking whether I had removed them by mistake. It is from the Medical Superintendent. I returned from India on the 25th November.

30 Q. The book was returned to Dr. Willenberg after the trial began? A. No long before that. I returned on the 25th November and about a week later I wrote to my lawyers asking them to return it.

Q. That letter 1D8 you received from Dr. Willenberg himself? A. Yes.

Q. You deny you have any communication from the D. M. & S. S.? A. None whatever.

(Evidence read.)

Q. Who gave your learned counsel those instructions? A. I never said glass doors.

40 Q. Counsel has said he was instructed? A. I did not give those instructions.

Q. You know now it is ground glass? A. I do not know.

No. 81
 Added-
 Defendant's
 Evidence
 Dr. Samahin
 Cross-
 examination
 —continued.

Q. You have no excuse to offer for the missing book. I put it to you that you have taken it away and that it is not forthcoming because that book will show at what times you were not in the hospital? A. That suggestion is absolutely false.

Q. You have no suggestion whatever to make? A. No, I cannot say how it got lost. If I had not removed this book probably it also would have got lost.

Q. Did you tell Dr. Willenberg how you came to remove this book?
 A. No.

Q. In reply to the letters you merely sent the book back? A. Yes. 10

Q. You did not give any explanation? A. No, I was not asked.

Q. Now we come to the time February to March, the servants have said you slept there in the afternoons, you deny that? A. Yes.

Q. In March Mrs. Alles went to Bandarawela for a holiday, you know the time she went? A. Yes.

Q. And the next contact you had with any member of the Alles' family was when Alles came down in April? A. But I used to go down to Merlton.

Q. Even when the ladies were away did you go? Yes every day.

Q. Why? A. Because I was asked to redirect his letters to 20 Jaffna.

(To Court :

Q. Who were the servants there? A. I cannot remember, there were servants.

Q. How many? A. Two or three of them.

Q. You saw them there? A. Yes they brought me the letters and I redirected them and handed them to the boy.

Q. Can you say which boy? A. I cannot be certain.

Q. Was it Pabilis, Philip or Valauthen? A. Not Valauthen one of the boys.) 30

Q. Did you redirect any letters to the plaintiff? A. No. There were no such letters.

(Mr. Ameresekere draws attention to P33.)

Q. Apart from that boy the other servants would know of your arrival there? A. I cannot say.

Q. Did you instruct your lawyers to the effect that you had been calling there throughout plaintiff's stay in Bandarawela for the purpose of redirecting the letters? A. I did not.

Q. Why not? A. It escaped my mind.

Q. They did not ask you? A. No. 40

Q. Now to come again to the 9th April the day on which the 1st defendant returned? A. Yes.

- Q. Do you suggest that you took him in your car from the station? No. 31
Added-
Defendant's
Evidence
Dr. Samahin
Cross-
examination
—continued.
- A. No.
- Q. Do you suggest that you took him out on the 9th? A. No.
- Q. You had consultations with your lawyers before the trial began?
- A. Yes.
- Q. And you told them what happened on those particular dates?
- A. Yes.
- Q. You were also in court throughout the evidence of 1st defendant?
- A. Yes.
- 10 Q. It was suggested to the 1st defendant in cross-examination that from the station he came straight to your house? A. No that is not correct.
- Q. Is it correct that you took him out on the 9th? A. No.
- Q. If he says that he met you on the 9th and called at the house of a mutual friend would that be correct? A. There is a slight error I called at his house and we went on the following day to the mutual friend he refers to.
- Q. Did 1st defendant come to your house in the first instance? A. No.
- 20 Q. It is not correct that we lunched together on the 9th. A. It is not correct that we went shopping on the 9th and called on the Ludowykes on the 10th.
- (Evidence read.)
- Q. Did you have lunch together on the 9th? A. This evidence refers to the 10th, it was not the 9th.
- Q. On the 10th 1st defendant was at Ratnapura with Mr. Krishnaratne? A. He left on the 10th afternoon. I met Mr. Weerasinghe at 1st defendant's house on the 10th morning at 9-30 or 10. 1st defendant said he was going in the afternoon. Mr. Weerasinghe was there when I
- 30 called. That was the first time I met Mr. Weerasinghe. That is the time I went with 1st defendant shopping. We got back at 12 or 12-30. I left for Bandarawela that same night, the 10th night.
- Q. Did he know you were going? A. Yes.
- Q. Did he give any messages for his wife? A. No he said he was also coming up and would meet me there.
- Q. I am putting it to you you went there on the 9th? A. No I am quite certain it was the 10th.
- Q. 1st defendant has said the first day he knew that you were there when he met you at Bandarawela? A. He knew I was there.
- 40 Q. Did Mrs. Alles meet you at the station when you went up? A. No.

No. 31
 Added-
 Defendant's
 Evidence
 Dr. Samahin
 Cross-
 examination
 —continued.

Q. You say it was a chance meeting at the Club? A. No, I knew that all the people there turn up at the Club in the mornings. It is a Tennis Club.

(To Court :

Q. What sort of a Club? Quite a good club and the day I went there I met Mr. Corea, the Minister of Labour, there also.)

I met Mrs. Alles on Good Friday morning.

Q. On Friday when you were giving evidence you said you went out shopping? A. Yes.

Q. You realised later that shops will be closed on Friday? A. 10 Yes they were closed.

Q. Today, it became vegetables? A. Well I was not so exact.

Q. You said you went out shopping and met at Millers? A. Millers was closed.

Q. And now you say you went to buy vegetables? A. Yes.

(Evidence read.)

Q. Now you tell me also that you invited the 1st defendant to lunch at the hotel? A. Yes.

Q. And he did not accept it? A. Yes.

Q. You swear that he told you he had already arranged to lunch at 20 Welimada? A. Yes.

Q. Mr. Weerasinghe was there at the time? A. Yes.

Q. You knew Mr. Weerasinghe's arrangements and Mr. Alles' would be the same? A. I did not know but they had come together.

(To Court :

They had come from Ratnapura.

Q. Have you got to go to Welimada to go to Ratnapura from Bandarawela? A. 1st defendant told me that they were going round to Nuwara Eliya, Kegalle and Colombo.)

Instead of going the same way they came they were going the other 30 way. At Bandarawela there is a hotel and at those other places resthouses.

Q. When you met near Millers there was this talk and you became aware that 1st defendant had come from Ratnapura and he and Mr. Weerasinghe had been there the previous day? A. Yes.

Q. Did he not tell you that he was going to lunch at Beliuloya? A. No.

Q. And that the Krishnaratnes were coming there and the party were meeting there? A. No, he told me he was going to Welimada.

(Shown 1D14). (Certified copy of the entries in the register at Beliuloya.)

Q. This shows a party of five had lunched at Beliuloya resthouse on the 14th? A. This shows they were there on the 11th May have been on the way up.

(To Court :

Q. You met the plaintiff near Millers before lunch? A. Yes.

Q. What is lunch time at Bandarawela? A. 12 to 1.

Beliuloya is 60 or 70 miles from Bandarawela. It is about two hours' run.)

(Shown 1D15). (Certified copy from the register at Welimada rest-house.)

Q. Mr. Alles' name is not here? A. There are three " illegible " names here. I am not aware how illegible names come to be entered in these registers.

Q. Having seen these two records are you not satisfied yet? A. I do not know where he lunched, he said he was going to Welimada.

Q. Did Weerasinghe hear that? A. Yes he was there.

Q. You offered Alles a lunch? A. Yes both of them.

Q. When 1st defendant went away you went and lunched at his house? A. Yes.

20 (To Court :

Q. Who paid for the lunch that day? A. At Solomons' I was a guest that day. I believe plaintiff paid for it. I do not know why she did not pay for her husband's lunch that day.)

Q. You invited plaintiff, 1st defendant and plaintiff's sister to lunch at the Bandarawela resthouse? A. Yes.

Q. 1st defendant said he was going away thereupon why did you not go with plaintiff and her sister to the Bandarawela hotel and lunch? A. Because their lunch was ready at Solomons', and there was only one extra person.

30 Q. 1st defendant could have lunched with them? A. Yes.

Q. If plaintiff wanted she could have invited 1st defendant and Weerasinghe for lunch there? A. Yes.

Q. You went back to the boarding house and lunched there and how long after that did you go to Muttetuagamas? A. About 2 o'clock.

Q. Plaintiff also went? A. Yes with her sister.

Q. Muttetuagama would be in a position to say when you came and when you left? A. Yes.

Q. They are not on your list? A. No.

Q. That evening you went to Major Fonseka's? A. Yes.

40 Q. He is not on your list? A. No.

Q. He would be in a position to state when you arrived and left?
A. Yes.

No. 31
 Added-
 Defendant's
 Evidence
 Dr. Samahin
 Cross-
 examination
 —continued.

Q. You heard Joslin say that Mrs. Alles was out of the boarding house for three or four nights? A. Yes.

Q. The 11th was one night and you were at Bandarawela and the 12th was another night? A. Yes.

Q. On the 12th from the Club they went to Jayewickreme's to change
 A. Yes.

Q. That is they did not go back to the boarding house? A. No.

Q. After the dance according to you you were dropped first? A.
 Yes.

Q. You do not know what happened after you were dropped? A. 10
 No.

Q. According to you on the 11th and 12th you were there, on the 11th you went to Diyatalawa and on the 12th you were at the dance and on none of these nights did plaintiff come to the Outschoorn's place?
 A. No.

Q. Where did you sleep on the 11th night? A. At the Outschoorn's.

Q. On neither of these nights did the plaintiff come there? A.
 No.

Q. Did you suggest on the last date that Dr. Babapulle mentioned 20 the 13th as the day? A. I do not know anything about it.

Q. You were there on the 13th as well? A. No.

Q. The entry of the 14th April is an entry made by you which is incorrect? A. It is so, it is a perfectly correct entry.

(To Court :

Q. It is not true that that entry has been fabricated to meet this case?)

Q. You told me you were on three days' casual leave? A. Yes.

(To Court :

Q. While you were at Outschoorn's did any one play rummy? A. 30
 I do not know.

Q. Do you play it? A. Yes.

Q. In the evenings do the boarders gather round the dining table?
 A. I do not know I was not there in the evenings.

My bedroom was near the dining room.

Q. If people were playing cards on the table they would be able to see anyone come or go into your bedroom? A. Yes.)

Q. You said you were on three days' casual leave? A. Yes.

(Shown 1D10)—statement of leave taken by Dr. Samahin up to 31-7-42.

Q. This shows that on the 10th April you had one day's leave? A.
 Yes.

Q. It does not say anything more? A. Yes, but I have really taken three days' leave, I have got the document. This is an incorrect statement.

(Shown P35 the sketch.)

The room shown as Dr. Samahin's room is the room I occupied.

Q. This was a sketch prepared by the plaintiff and produced, is that correct? A. Yes.

Q. That is the room you occupied. You deny that Mrs. Alles ever came there? A. Yes.

10 (To Court :

I heard Babapulle's evidence. That is not true. I cannot suggest any reason why he is giving false evidence. He is a perfect stranger to me. I cannot say why he is giving that evidence.)

Q. He is a respectable man? A. Yes.

Q. For instance there would be evidence from the Outschoorn's house to prove that you were not there that night and that Babapulle is telling lies? A. Yes.

I have heard of Dr. Babapulle before that he is a veterinary surgeon. That is all. He has two brothers who are doctors and I know them. They
20 are good friends of mine.

Q. Is he a man who is well off? A. I do not know.

Q. He has had his training in England? A. I do not know.

(To Court :

Q. Did you get a bill from the Outschoorn's? A. Yes.

Q. Which you paid? A. Yes.

Q. And you got a receipt? A. Yes but I have not got it.

Q. The Outschoorns will have books to show how many days you stayed there? A. Yes I think so.)

Q. You say that evidence is utterly false? A. Yes so far as I
30 am concerned.

(To Court :

Q. Did any lady or person come to call on you professionally to get a mixture? A. No.)

Q. You came back to Colombo on the 14th morning? A. Yes.

Q. On the 9th when 1st defendant came from Jaffna you went to see him? A. Yes.

Q. 1st defendant tells us he next met you on the 15th evening? A. 15th morning.

Q. When he came on the 9th you met him on the 9th then having
40 returned from Bandarawela did you go and see him? A. On the 15th morning. It was not on the 15th.

No. 31
 Added-
 Defendant's
 Evidence
 Dr. Samahin
 Cross-
 examination
 —continued.

Q. Did you bring a letter to him from his wife? A. No.

I heard his evidence but that is not correct.

Q. At what time in the morning did your train come in? A. 6-30
 between 6 and 7.

Q. You went home first? A. Yes.

Q. At what time did you meet 1st defendant? A. I did not
 meet him that morning. On the 15th I met him some time in the morning.
 I cannot say the time.

Q. The 17th was 1st defendant's birthday? A. Yes.

Q. Had you any discussion with Mrs. Alles in Bandarawela before 10
 you came down about this birthday? A. No.

Q. Did you have any discussion about going to the Nuwara Eliya
 dance? A. No.

(To Court :

Q. When you were at Bandarawela and had met the plaintiff you
 knew that her holiday was running out, did you know when she was going
 to finally return? A. Towards the end of that week.

Q. Did you know that she was intending to return on the 20th?
 A. Yes.)

Q. Did you at that stage discuss the question of going to the Nuwara 20
 Eliya dance on the 19th? A. No, nobody thought of it.

Q. That was decided only after they came to Colombo? A. Yes.

(To Court :

Q. When you left Bandarawela on the 13th night you had no idea
 that plaintiff intended to come to Colombo with the baby on the 17th?
 A. No.

Q. Supposing you heard so would you have dissuaded her? A. No.

Q. She would have to come and go back and come back with Merita?
 A. Yes, but she never told me.

I admit it is a tedious journey.)

30

Q. Did it surprise you to find her there on the birthday? A. Yes.

Q. When you went that evening you had not the faintest idea that
 she was there? A. No.

(To Court :

When I went there I thought she was still at Bandarawela.)

Q. Did the plaintiff ever telephone to you from Bandarawela? A.
 I cannot remember because I get so many telephone messages.

Q. Would you deny that she did so? A. I cannot say.

Q. You came on the 13th night and she on the 17th? A. Yes.

Q. That is a very short period of time? A. Yes. I did not 40
 receive any trunk calls on the 15th or 16th.

Q. Now about the discussion on the 17th, who were the parties to this discussion? A. All those who were there. Some of the guests had already gone and there were a few people at that time and we were all seated together.

Q. Whose suggestion was it? A. Mr. Namasivayam's.

Q. Was Mrs. Namasivayam present? A. Yes.

Q. All arrangements were made there? A. Yes.

Q. And concluded there? A. Yes.

Q. You were aware of all the other arrangements but not about the arrangement about the child? A. No.

Q. The child was there? A. Yes.

Q. The discussion took some little time, the route, etc.? A. Yes.

Q. And no discussion with regard to what was to happen to the child? A. No.

(To Court :

Q. You were going there forming a party? A. Yes.

Q. That is you, Namasivayam, plaintiff and Miss Ludowyke? A. Yes.

Q. Whose partner was who? A. There was no such talk. We just formed a party of one.)

Q. You heard nobody make any mention about the child? A. No.

Q. When you went there the child was not there? A. No.

Q. You did not ask where is the baby? A. No.

Q. You were a great friend of the family? A. But they knew how to look after the child.

Q. No talk about the child at all? A. No.

Q. It is only after this case started that you became aware that the child was staying at Namasivayam's? A. Yes.

Q. Not even a casual comment? A. No.

Q. She did not even during the whole journey say I wonder how the baby is getting on? A. She may have I cannot remember.

(To Court :

Q. How did you seat yourselves in the car? A. There was the driver and Mr. Namasivayam, and plaintiff and Miss Ludowyke and myself in the back.

Q. You sat in the middle? A. Yes.)

Mrs. Namasivayam was present at the discussion.

Q. You were aware while the discussion took place as to why she was not going? A. She was not in the best of health. I knew she had miscarried and she was not travelling.

Q. It was put to Mr. Alles by your counsel that he had requested Mrs. Namasivayam to stay back was that on instructions? A. No.

No. 31
 Added-
 Defendant's
 Evidence
 Dr. Samahin
 Cross-
 examination
 —continued.

Q. It was suggested to Mr. Alles that he approved of this arrangement and he asked for your car because he wanted to stay back with Mrs. Namasivayam? A. He asked me for the car.

Q. Was it at your suggestion that he was asked that he approved of all this, to his wife going up with you because he wanted to stay back with Mrs. Namasivayam?

(To Court :

Q. Do you suggest now that these arrangements were made so that Mr. Alles could have Mrs. Namasivayam for himself? A. I make no such suggestion. I have never made such a suggestion.) 10

Q. It was suggested by your counsel that Mr. Alles threw his wife into your company and has brought this action against you because he was in love with Mrs. Namasivayam, do you make that suggestion? A. No.

(Evidence read.)

(To Court :

Q. The arrangement you know was that Namasivayam was to go taking his car, you were to give Alles your car and he was to take Mrs. Namasivayam out to the pictures and give her a dinner and Mrs. Namasivayam was to look after the baby? A. I know that now. 20

Q. Did you see anything wrong in that arrangement? A. No.)
 Mr. Alles had no car in 1941.

Q. Sometimes you went there when he wanted the use of your car?
 A. Yes.

Q. The suggestion was put to him that leaving you with his wife he made a bee line for Namasivayam's house? A. No I do not suggest that.

((Evidence read.)

Q. Did you give such instructions? A. No.

(Evidence read.)

“Then came the arrangement that four people.....arrangement.” 80

Q. Is that your case? A. I do not suggest it.

Q. On the 18th you people left? A. Yes.

Q. You say you did not know at the time what arrangement was made for your accommodation? A. No.

Q. Did you know at the time you left where the ladies were going to? A. Jayewickreme's. I knew that when we left because Monty Jayewickreme said that he could find accommodation for two persons.

Q. And then you told us today that you went first to the house of Solomons'? A. Yes. I got down from the car but did not go inside 40 the house.

Q. You heard the woman Joslin say that you came into the house?
 A. That is false.

Q. She also says that a suitcase was brought in there and that from that suitcase was taken out a newspaper parcel? A. No I do not know. My clothes were in the suitcase in the car.

Q. Not in the newspaper parcel? A. No.

Q. She took into the house a big suitcase? A. I did not see. A big suitcase was taken in.

Q. And Joslin says she went out with a small suitcase? A. I cannot say.

Q. She had a suitcase in the car.

10 I did not see the suitcase shown to Joslin in Court.

There were a number of suitcases in the car and which was hers I cannot say.

Q. When she left in the morning did she have a small suitcase or a big one? A. I do not remember.

Q. Are you prepared to contradict that woman when she says it was an attache case? A. No.

Q. The ladies were to stay at Jayewickreme's according to the original arrangement? A. Yes.

Q. You said today that they went into the house and returned—
20 Mrs. Alles alone returned? A. Yes.

Q. And Mrs. Alles told you that Miss Ludowyke was not willing to stay there? A. Yes.

(To Court :

Q. What was the objection to Miss Ludowyke staying there? A. There was no objection except she felt that she would be more at home with Merita in the boarding house than at Jayewickreme's. Plaintiff told me so.

Q. You first became aware of that when plaintiff came and told you that? A. Yes.

30 (To Court :

Q. There she and you were going to stay at Jayewickreme's? A. Yes.)

(Evidence read.)

Q. There is some variation in the evidence you gave on the last occasion and today. You said it was in the car that the discussion took place and Miss Ludowyke said she could not stay there?

(To Court :

Q. In the car you were in the back seat and if any discussion took place in the car it would be across you? A. Yes.)

40 (To Court :

Q. Why this slight variation in your evidence? No answer.

No. 31
 Added-
 Defendant's
 Evidence
 Dr. Samahin
 Cross-
 examination
 —continued.

Q. It is suggested that during the week end you have changed your evidence? A. No I deny that.)

Q. Mrs. Alles was familiar with the Jayewickreme house? A. Yes

Q. So were you? A. Yes.

Q. And both of you knew very well that the only rooms for guests in that house were the two rooms J and F on the sketch? A. No, I had not been into the bedrooms.

Q. You know that Jayewickreme's room was on one side? A. Yes.

Q. Mrs. Alles had been there to change her dress? A. Probably 10 she knew the internal arrangements.

Q. Did you know about the telegram that was sent to Jayewickreme before the party started? A. I did not know about it.

Q. You gave no instructions with regard to that telegram? A. No.

Q. You do not know whether 1st defendant had dictated it or anything like that? A. No.

Q. You now know that those were the only available rooms at Jayewickreme's the two rooms adjoining each other? A. Yes.

(To Court :

20

Q. Would you have liked your wife to have stayed with a strange man in two rooms like that? A. I would not have objected.

Q. No objection at all? A. None at all.)

Q. You know Victor Dias? A. Yes.

Q. Namasivayam stayed there? A. Yes, he was a friend of his.

Q. You knew them very well? A. But I had not been to their place.

Q. Did you make any suggestion of staying over there? A. No.

Q. It is not very far from the Jayewickreme's? A. Some distance off.

30

(To Court :

Q. What does a room in the Bandarawela hotel cost? A. About Rs. 7.50 or Rs. 10.

Q. What is your salary? A. Rs. 750.

Q. Altogether? A. I earn about Rs. 1,000.)

Q. You could have afforded to have gone and applied for a room at the Bandarawela hotel? A. Yes.)

Q. The original arrangement was that the two ladies were to stay at the Jayewickreme's? A. Yes.

Q. And then when Miss Ludowyke said she would not go there they left one lady to stay at Jayewickreme's? A. Yes.

Q. There was no suggestion when you left Colombo that you were to stay at Jayewickreme's? A. No. Jayewickreme told me that he can put up two persons while at Colombo.

Q. The arrangement was that the two ladies were to put up there? A. Yes.

Q. Mrs. Jayewickreme was not aware of the fact that you were going there? A. I do not know that.

(To Court :

Q. You had drinks there first of all? A. Yes.

10 Q. Then the dinner was served? A. Yes.

Q. After dinner you came and sat out again? A. Yes.

Q. Who went to bed first? A. Mrs. Jayewickreme.

Q. What time? A. After 11.

Q. You heard Errol Jayewickreme's evidence that they gave you ample time quietly to go but as you were not going Mrs. Jayewickreme got annoyed and went to bed? A. I do not know that.

Q. You did not see anything from her manner? A. No.

Q. You have been in England among English people and you have also been among educated people in Colombo and you know when people 20 get tired of your company? A. Yes.

Q. No signs were given to you? A. No.

Q. It is suggested that they gave you all opportunities to go away but you did not leave they left you and went in? A. No, I was not aware of that.)

Q. The arrangement at Colombo was that the two ladies were to stay there? A. Yes.

Q. That arrangement was never changed until Miss Ludowyke got down at Solomons'? A. Yes.

Q. Mrs. Jayewickreme knew of the fact that two were coming there 80 for dinner? A. Yes.

Q. The change in the arrangement was made at Solomons' house? A. Yes.

Q. Mrs. Jayewickreme could not know of that change? A. No.

Q. If the arrangement was that two ladies were coming there she would have expected two ladies? A. She did not know who was coming to stay.

Q. She did not expect you? A. My name was not mentioned.

(To Court :

Q. After Mrs. Jayewickreme went to bed who went to sleep next?

40 A. Errol Jayewickreme showed me my room and we dispersed. I was shown the room marked J and plaintiff's room F.

Q. Were you shown in your room first? A. Yes,

No. 81
 Added-
 Defendant's
 Evidence
 Dr. Samahin
 Cross-
 examination
 —continued.

Q. And you went in? A. Yes.

Q. Did you wash that night? A. Yes.

Q. Where? A. In the adjoining bathroom.

Q. Was there a wash-hand stand there? A. Yes.

Q. Did you answer a call of nature before you went to bed? A. Yes.

Q. How did the plaintiff manage? A. I do not know.

Q. In order to get to your room you had to pass room F? A. No, I went through the dining room.

Q. The evidence is that there was only one wash-hand stand and 10 that was in your room? A. There was a bathroom attached to my room.

The plaintiff did not pass through my room to go to the bathroom that night. I do not know how she answered a call of nature.)

Q. After you were shown your room how did the plaintiff go to her room through your room? A. No.

(To Court :

Q. As a married man before you went to sleep did you not see the lock in the door to see whether it was bolted against you? A. No.)

Q. When Miss Ludowyke decided not to stay at the Jayewickreme's 20 you suggested that you should stay there? A. No.

Q. The two ladies were to stay at Jayewickreme's and Namasivayam at Dias' and you did not know where you were going to stay? A. No.

Q. When did you decide to stay at Jayewickreme's? Because there was accommodation for two persons I thought I would stay there.

Q. There was no discussion between you and the plaintiff? A. No.

Q. Plaintiff never asked you to stay there? A. No.

Q. Mrs. Jayewickreme at no time asked you to stay there? A. No. 30

Q. Errol at no time asked you to stay there? A. No.

Q. You stayed? A. Yes.)

Q. You did not know the house at the time? A. No I knew there was accommodation for two.

Q. Arrangements might be made for two in one room or for two ladies in one room? A. But Mr. Jayewickreme said there was accommodation for two persons.

Q. At that time two ladies were suggested? A. He did not say only two ladies would be accommodated but he said two persons.

Q. You did not make inquiries as to whether he was able to put you 40 up or things like that? A. No.

Q. You had not formed any decision as to where you were to stay if this accommodation had not fortuitously turned up? A. No.

Q. On the following day you left for Nuwara Eliya? A. Yes.
Luncheon interval.

Sgd. R. F. DIAS.

No. 31
Added-
Defendant's
Evidence
Dr. Samahin
Cross-
examination
—continued.

18th January, 1943.

DR. T. S. M. SAMAHIN

(The witness says that he wants to make an explanation. I tell him it is better not to volunteer anything, that any explanation he has to make should be told to his learned Counsel who will then decide what action should be taken.)

Q. 19th April you set out for Nuwara Eliya? A. Yes.

Q. What time? A. After lunch.

(To Court :

Q. You lunched where? A. At Mrs. Jayewickreme's I think.

Q. Who else? A. Plaintiff, Merita and I lunched at Mrs. Jayewickreme's and Miss Ludowyke too.)

Q. Was Errol Jayewickreme there? A. Yes.

(To Court :

20 We were on our way to Nuwara Eliya.)

Q. What time did you get to Nuwara Eliya? A. 5-30.

Q. The dance was at the Grand Hotel? A. Yes.

We went to Nuwara Eliya after lunch leaving the place about 2 or 2-30.

Q. Did not go back to Solomons'? A. No. Not after lunch.

Q. After getting up that morning you and plaintiff went to the Club?
A. Yes.

Q. Where did you contact Merita and Miss Ludowyke? A. Plaintiff left me at the Club and brought Merita and Miss Ludowyke from the 30 Solomons' and all the luggage.

Q. Then you went to Jayewickreme's for lunch? A. Yes.

Q. Were the Jayewickreme's expecting you? A. Yes.

Q. When did you arrange the lunch? A. We were there the morning and arranged for lunch.

Q. Where did Namasivayam have his lunch? A. At Victor Dias' We picked him up on the way to go to Nuwara Eliya.

Q. Who arranged for this lunch? A. Mrs. Jayewickreme offered lunch. She asked us whether we were coming for lunch and we said yes.

Q. How did she arrange lunch for Miss Ludowyke and Merita? A. 40 Perhaps plaintiff may have said about them.

No. 31
 Added-
 Defendant's
 Evidence
 Dr. Samahin
 Cross-
 examination
 —continued.

- Q. You picked up Mr. Namasivayam? A. Yes.
- Q. That morning at the Jayewickreme's you got up first? A. Yes
- Q. You went out? A. Yes.
- Q. The lady joined you later? A. Yes.
- Q. After breakfast plaintiff went out to the Solomons'? A. I went to the Club and plaintiff went on to the Solomons'.
- Q. What time was that? A. About 9-30.
- Q. Did you say good-bye to Mrs. Jayewickreme? A. No. I was going back for lunch.
- Q. When did you know that? A. In the morning. 10
- Q. Who told you that? A. We were invited.
- Q. Errol Jayewickreme was there when Mrs. Jayewickreme asked you whether you were coming for lunch? A. Yes.
- Q. Your suitcase was left at Mrs. Jayewickreme's? A. Yes.
- Q. The lady took her suitcase away? A. I can't say.
- Q. They came back with their whole luggage? A. Yes.
- Q. Your suitcase was put on later? A. Yes.
- Q. You went to Namasivayam's and picked him up? A. Yes.
- Q. There was a large number of people and there was plenty of luggage? A. Not much luggage. There was the luggage of four 20 people. It was a big car. It was an Opel I think.
- Q. The dance was at the Grand Hotel? A. Yes.
- Q. Where did you go to straight at Nuwara Eliya? A. To St. Andrew's.
- Q. Not to the Grand? A. No.
- Q. Noel de Costa was staying at the Grand Hotel? A. No, at St. Andrew's.
- Q. You know Mr. George Welsh? A. Yes.
- Q. Good friend of yours? A. Yes.
- Q. Did he place his room at your disposal? A. Mr. Noel de 30 Costa and Mr. George Welsh were occupying one room.
- Q. You changed in the room? A. Yes.
- Q. Where did they sleep? A. They went out. When we changed they gave us their room.
- Q. The dance was over about 2 o'clock? A. About 3 o'clock.
- Q. Nuwara Eliya dances close earlier? It was over about 3 o'clock
- Q. And you went back to the hotel? A. Yes after some time. We were having drinks.
- Q. You had travelled up on the 18th to Bandarawela? A. Yes.
- Q. Tiresome journey? A. Not much. I am used to travelling. 40

Q. Then you travelled from Bandarawela to Nuwara Eliya ?
 Yes. A.

Q. You had been dancing the whole night ? A. Yes.

Q. The lot of you were fairly tired ? A. I was not.

Q. Namasivayam was tired ? A. We were all resting.

Q. He was resting on a couch ? A. No.

Q. What did he rest on ? A. Chairs.

Q. This was a bedroom occupied by George Welsh and Noel de Costa ?
 A. Yes. There was one big bed. Nobody slept. The ladies were seated
 10 on the bed.

Q. There were two single beds ? A. There was one big bed.

Q. George Welsh and Noel de Costa shared that bed ? A. There
 was one bed. We went to the room at 4 o'clock. When we went
 there they were not in the room. Their room was placed at our disposal.

Q. It was the room that had been occupied by George Welsh and
 Noel de Costa ? A. Yes.

Q. They were sharing a room which had a double bed ? A. Yes.

Q. There were two single beds ? A. No.

Q. I put it to you there were two single beds and a couch ? A. No.

20 Q. Namasivayam was resting on the couch ? A. No.

Q. I put it to you that Miss Costa and Miss Ludowyke shared one
 bed ? A. No.

Q. And plaintiff and you rested on one bed ? A. No.

Q. You did not remain in your evening clothes ? A. I removed
 my coat.

We did not sleep at all.

Q. The ladies also stayed in their sarees ? A. Yes.

(To Court :

I removed the collar and tie and the coat and waistcoat. I was in
 30 shirt and trousers. The ladies were in their ball room dresses till morning.

Q. Was plaintiff wearing jewellery ? A. Yes.

Q. She was still wearing those things ? A. I cannot say.)

Q. It was not a big room ? A. It was a fairly big bedroom.
 There were two or three chairs, a big bed and a toilet table.

Q. How many people were there ? A. Five. The ladies sat on
 the bed.

Q. The gentlemen sat on chairs ? A. Two of us sat on the chairs.

Q. Nuwara Eliya is rather a cold place ? A. At that time after
 a dance and after drinks one does not feel cold.

40 Q. In the morning what time did you begin to change ? A. When
 it was dawn—about 7 o'clock.

No. 31
 Added-
 Defendant's
 Evidence
 Dr. Samahin
 Cross-
 examination
 —continued.

- Q. The gentlemen changed in that room? A. Yes.
- Q. The ladies changed in the bathroom? A. Yes as we did the previous night.
- Q. They must have gone in expensive sarees? A. Yes.
- Q. They went to change in the bathroom? A. Yes.
- Q. Then you left Nuwara Eliya? About 8-30 or 9 a.m.
- Q. You came to Bandarawela again? A. Yes.
- Q. Lunched at Outschoorn's? A. Yes. Namasivayam went back to Victor Dias'.
- Q. Then you came on to Colombo? A. Yes. 10
- Q. What were you chatting about from 4 o'clock till dawn? A. About this and that.
- (To Court :
- Q. Did you not doze off at all? A. No.
- Q. Did the ladies doze off? A. I did not observe it.)
- Q. You kept your light burning till morning? A. Yes.
- Q. Chatting? A. Yes.
- Q. Smoking? A. Yes.
- Q. Had any drinks? A. No.).
- Q. You came then from Bandarawela to Colombo? A. Yes. 20
- Q. At the time you came Mr. Alles was in Jaffna? A. Yes.
- Q. You heard the evidence of the servants that you slept the nights there—that is false? A. Yes.
- Q. That you had your car parked in the garage or in the portico?
 A. That is false. I never slept the night there.
- Q. Have you ever escorted the plaintiff home late at night? A. Yes, up to the date, along with her sister.
- Q. You have never seen a girl getting up and opening the door?
 A. No.
- Q. You saw the witness Alice? A. Yes. 30
- The evidence of Alice put to witness.
- Q. That sometimes you used to go into the spare room and go away in the morning? All that is false? A. Yes.
- Q. You heard her say that you used to be in that house fairly frequently sitting on the settee? A. Oh, yes.
- Q. You had your head on the plaintiff's lap and your arms round her? A. No.
- Q. One woman said you and she behaved as if you were an engaged couple? A. That is false.
- Q. You heard one of the servants say that you used to come towards 40 the kitchen.....? A. That is false.

Q. You heard Pabilis' evidence that on one occasion when you were in the spare room Paul de Costa came to the house? A. That is false.

Q. You heard him say that he saw you lying in the room wearing a sarong? That is all false? A. Yes.

(To Court :

Q. Have you ever taken egg flips in this house? A. No.

Q. Have you drunk a cup of coffee in this house? A. Yes, in the afternoon and sometimes after lunch.

Q. You never had a morning cup of coffee? A. No.)

10 Q. No cup of coffee was brought to you in the spare room? A. I was never in the spare room.

Q. 9th to 11th July, Mrs. Alles was ill? A. Yes.

Q. Dr. Frank Gunasekera came in there? A. Yes.

Q. You heard him say you were in the room when he came? A. Yes.

Q. You were seated in Court at the time? A. Yes.

Q. You had counsel representing you on that day? A. Yes.

Q. You did not suggest to Dr. Frank Gunasekera that you had met him in the verandah and taken him to the room? A. No.

20 (To Court :

Q. If your story is correct that you were not in the room that you went with Dr. Frank Gunasekera why was that not put to the doctor? A. I accept his evidence.

Q. Dr. Frank Gunasekera's evidence was that Merita was in the verandah and he went in and found you in the room? A. If Dr. Frank Gunasekera says that, it is true.)

Q. No question was put to him as to the presence of an ayah? A. No. There was an ayah in the room.

Q. If you were in the room with an ayah that nullifies to a great extent the adverse inference—why was not the ayah's presence not put to Dr. Frank Gunasekera by your Counsel? A. I cannot say.

Q. You realised that a point was being made of your presence in the room? A. Yes.

Q. Did you tell your Counsel that there was an ayah in the room? A. No.

Q. You realised the presence of the ayah would make a difference? A. Yes.

Q. You realised that this was a point being made against you? A. Yes.

40 Q. You realised that the presence of the ayah would have made a difference? A. Yes. Dr. Frank Gunasekera himself thought that my presence there was not improper.

No. 31
 Added-
 Defendant's
 Evidence
 Dr. Samahin
 Cross-
 examination
 —continued.

Q. You realised that your presence in the room was being made a point against you by counsel for Mr. Alles? A. Yes.

Q. You realised the presence of the ayah would make a difference? A. Yes.

Q. You did not put it to Dr. Frank Gunasekera? A. Yes.

Q. Dr. Frank Gunasekera made a certain diagnosis? A. Yes.

Q. When Dr. Frank Gunasekera examined her was she wearing a house coat, a saree or a night dress? A. She had a sheet on. The sheet was lowered.

Q. Did she undress? A. She lifted up something. 10

Q. She was not wearing a saree? A. I cannot remember.
 (Previous evidence put to witness).

Q. Had she partially to undress? A. She did not have to remove anything.

Q. When Dr. Frank Gunasekera was giving evidence you gave no instructions to your lawyers that there was a little lapse on the part of his memory? A. I did not tell.

Q. You did not think it worth while? A. Yes.

Q. He made a diagnosis? A. Yes.

Q. You volunteered a disagreement with that? A. Yes. I 20
 merely made a comment.

Q. Dr. Frank Gunasekera ignored you because he did not treat you as a medical man in attendance? A. Yes.

Q. Was that the first date that Mrs. Alles was ill? A. Yes.

Q. Had you examined her? A. No.

Q. How did you venture to disagree with Dr. Frank Gunasekera? A. From the symptoms. I only made a comment to him.

Q. You said that day that it might have been appendicitis. You could not possibly say whether it was appendicitis or not without a palpate? A. Yes. 30

Q. Dr. Frank Gunasekera had examined her from front and behind? A. Yes.

Q. He first of all examined the front portion? A. Yes.

Q. Did he take her pulse? A. Yes.

Q. Did he take her temperature? A. I think so.

Q. Then he put the stethoscope? A. Yes.

Q. Then he pressed? A. Yes.

Q. Then he asked the patient to turn over? A. Yes.

Q. You did not do that? A. No.

Q. How did you know that it was appendicitis? A. Because 40
 there was vomiting, pain on the right side of the abdomen and temperature.

Q. Dr. Frank Gunasekera had palpated her and examined her ? A. Yes. His diagnosis was quite correct.

Q. He had also examined her at the back and he realised the pain was from the back to the front ? A. Yes.

Q. Without palpating you cannot say whether it is appendicitis or not ? A. Yes.

Q. You had not palpated A. No.

Q. You were not in a position to give any opinion worth while as to whether it was appendicitis ? A. Yes.

10 Q. You realised as a doctor that you were not in a position to give any opinion worth while at all on the question whether it was appendicitis ? A. Yes.

Q. It would have been ridiculous for you to suggest that it was not renal colic but appendicitis ? A. Yes.

Q. Dr. Frank Gunasekera gave us three possibilities—do you agree with that ? A. Yes.

Q. One was renal colic ? A. Yes.

Q. The second was appendicitis ? A. Yes.

Q. The third was ectopic gestation ? A. Yes.

20 Q. For ectopic gestation if you had nothing else to go would necessitate examination ? A. Yes.

(To Court :

Q. You had not taken the temperature ? A. No.

Q. You had not seen her vomiting ? A. I saw her vomiting. She told me of the pain.)

Q. Dr. Frank Gunasekera says that you disagreed with his diagnosis ? A. I suggested an alternative.

Q. I put it to you doctor that you made a suggestion to Dr. Frank Gunasekera because you felt that there was more which Dr. Frank Gunasekera should appreciate ? A. No. When Dr. Frank Gunasekera made that diagnosis I made a comment.

Q. You heard Dr. Frank Gunasekera say that you disagreed ? A. Yes.

Q. I am putting it to you that if Dr. Frank Gunasekera did not know that the lady had conceived and if you knew that fact you would have been able to throw light on the diagnosis ? A. No.

Q. If it was ectopic gestation you would necessarily postulate a conception ? A. Yes.

(To Court :

40 Q. You are a doctor ? A. Yes.

Q. You have been attending on ladies at labour ? A. Yes.

Q. Ladies consult you ? A. Yes.

No. 31
 Added-
 Defendant's
 Evidence
 Dr. Samahin
 Cross-
 examination
 —continued.

Q. About the probable date of their delivery? A. Yes.

Q. It is part of your work? A. Yes.

Q. Having the facts of this case before you are you in agreement with Dr. Wickremasooriya's evidence that the child that was born on 26th March was a full-term child? A. I cannot make any statement because I have not made a special study of this subject.

Q. But as a doctor? A. I have been out of touch for a long time.

Q. You passed in midwifery? A. Yes.

Q. Granting a full-term child was born on 26th March when would you put the date of conception? 10

(Mr. Obeyesekere objects.

I think the question can be put.)

A. I cannot say.

Q. Is it you cannot say or is it that you have not got enough expert knowledge to say that? A. I have not got enough expert knowledge.)

Q. Ectopic gestation postulates a conception? A. Yes.

Q. I am putting it to you definitely that the lady had conceived and you thought it was possibly an ectopic gestation? A. I never thought anything of the sort; if it was so I would have suggested to Dr. Frank Gunasekera. 20

Q. That was why you ventured to suggest to Dr. Frank Gunasekera appendicitis? A. No.

Q. You were there not as a doctor? A. No.

Q. You ventured to disagree with Dr. Frank Gunasekera? A. I merely made a comment.

Q. Dr. Frank Gunasekera quite rightly ignored you altogether? A. Yes.

Q. But for his sticking to professional etiquette and ignoring you..... I am putting it to you definitely that you thought that the lady had conceived? A. No, I did not know. 30

Q. That was the reason why you disagreed? A. No.

Q. How did you happen to be in the room? A. I called in and I found her ill.

Q. Why did you call in there? A. As I said before I used to go frequently to the place.

Q. Had you been to the bedroom? A. I was told she was ill and I went to the bedroom.

Q. You walked in? A. Yes.

Q. Merita was in the house? A. She was in the verandah and I went into the room. 40

Q. She did not even accompany you? A. No,

Q. You heard the evidence of the servant woman that during plaintiff's illness you used to be seated on that bed? A. That is false.

Q. This is the one and only occasion you entered that room? Yes.

Q. It is just a coincidence that Dr. Frank Gunasekera came in at that time? A. Yes.

Q. Did you write to Mr. Alles to come down? A. I did not ask him to come down. I wrote to him telling him about the condition of his wife.

10 Q. Was that the first letter you wrote to Mr. Alles? A. No. I had written to him before. He also had written to me before.

(To Court :

I did not suggest to him to come down for the week end. I wrote to him telling him about the condition of his wife.

Q. That is false evidence that you suggested to him to come down? A. As far as that part that I made the suggestion that he should come down is concerned it is false.)

Q. You used to visit her during her illness? A. Yes.

20 Q. Was it her idea that you should write to Mr. Alles? A. No, my own.

Q. Did she mention the fact that she had written to him? A. No.

Q. You were not aware of the fact that he was unable to come down for a week end? A. No.

Q. She did not mention that fact to you? A. No.

Q. Because there was too much work? A. No, she did not tell me that.

Q. The next time Alles came down was on the 9th August? Yes.

30 Q. That time you met him at the races? A. Yes, I met him in the morning.

Q. The evidence of the servants was that from that day you continued to visit in the same way? A. I did not do so in the manner the servants said.

Q. That evidence of the servants is all false? A. Yes.

Q. Those servants know you—they can make you out? A. Yes.

Q. There is no case of mistaken identity? A. No.

Alice's evidence put to witness.

Q. Is that true? When did Merita leave the house? A. Some time in August but I cannot be definite. It is August/September.

40 Alice's and Pabilis' evidence put to witness.

I used to go frequently but about the resting is false.

No. 31
 Added-
 Defendant's
 Evidence
 Dr. Samahin
 Cross-
 examination
 —continued.

Q. You can offer no suggestion why they should give false evidence?
 A. No.

Q. Joslin's evidence is all false? A. Yes.

Q. You can offer no suggestion why she should tell a lie like that?
 A. No.

Q. Mr. Alles returned about 22nd August? A. Yes.

Q. You continued to visit the house? A. In the same way.

Q. I am putting it to you the servants thereafter say that you did not come at night? A. I did not go even before.

Q. Mr. Alles was coming to Hulftsdorp regularly? A. Yes. 10

Q. He used to leave home fairly early in the morning? A. I cannot say.

Q. I am putting it to you that after Mr. Alles came to the house you visited the house only when Mr. Alles was away? A. No, I visited the house as before.

Q. You heard the evidence of the servants that you used to visit the house only when Mr. Alles was not there? A. That is all false.

Q. Did you have your meals on week days when Mr. Alles was not there? A. No. Chiefly on Sundays. May be I had lunch on week days sometimes. 20

Q. On those days Mr. Alles was not there? A. There were days when he did not come to the Courts and if he was there I used to have lunch with him.

Q. You would know the dates on which Mr. Alles would come to the Courts? A. When I drop in the morning he would ask me to stay.

Q. You would drop in in the morning and sometimes found him in in the morning? A. Yes.

Q. You dropped in in the morning and found him sometimes in the house? A. Yes.

Q. What time did you go there? A. I just dropped in on my way to the Club from the hospital. 30

Q. It is not on the direct route? A. No. It is not on the direct route.

Q. You used to drop in there and if Mr. Alles happens to be there he asks you to be present for lunch? A. I finish my work about 10-30 or 11 a.m.

Q. Is not Merlton clean out of your route? A. It is a little bit out of the way.

Q. You would normally drop in after hospital? A. Two or three times a week I would drop in. 40

Q. And you knew always those were working days? Sometimes you found him at home and he asked you to stay for lunch? A. Yes.

Q. Did Mrs. Alles ask you to stay for lunch when Mr. Alles was not at home? A. No. She did not ask me for lunch.

Q. How long did you stay when you dropped in? A. I used to stay for 15 minutes or half an hour when I dropped in.

Q. The only occupant of the house was Mrs. Alles other than the servants and the baby? A. Yes.

Q. That was after Merita left? Yes.

I do not mean that I used to go two or three times a week in the morning. I used to drop in two or three times a week and sometimes it 10 was in the morning.

Q. In the morning ordinarily you knew that he was not there? A. Yes.

Q. The 3rd November was Mrs. Alles' birthday? A. I can't remember the exact date.

Q. You attended a party? A. Yes.

Q. You gave her a present? A. No.

Q. Neither in 1941 nor 1940? A. No.

Q. You swear to that? A. Yes.

Q. Mr. Alles said that you gave a bottle of scent? A. That is false.

20 Q. You were such a great friend of the family that you were dropping in in July, August, September and October occasionally in the morning—what was there wrong in giving a present? A. I did not give a present.

Q. Was it to save money? A. Not for that. I am not in the habit of giving presents.

Q. For the lunches? A. I always used to take them out and return the lunch.

Q. Was there any objection to giving presents? A. No.

Q. You got a present? A. No.

Q. Did you get a cigarette case? A. No.

30 Q. In 1940? A. Nothing.

Q. In 1941? A. Nothing.

My birthday was on the 20th December.

Q. You did not get a gold watch? A. No.

Q. A Lucina gold watch? A. No.

Q. You deny also the cigarette case in 1940? A. Yes.

Q. You deny receiving a cigarette case from Mr. & Mrs. Alles in 1940? A. Yes.

Q. Do you know what other presents she received on her birthday? A. No.

40 Q. Did you give her a basket of flowers? A. No.

Q. The first present you gave was a basket of flowers and the second a bottle of scent? A. No.

No. 31
 Added-
 Defendant's
 Evidence
 Dr. Samahin
 Cross-
 examination
 —continued.

Q. Were you told by Mr. Alles somewhere in October or September that his wife was going about too much and neglecting the child? A. No. He never did tell me.

Q. Is it correct that after November your visits to that house became less frequent? A. No.

Q. Your visits to Mr. Alles became less frequent? A. As usual or even more frequent.

Q. As a matter of fact after October you had more time to go there? A. Yes.

Q. Mr. Alles continued to come to work to Hulftsdorp—you know his normal hours of work? A. I did not know. I did not know his office hours.

Q. You do not know up to date that it was from 10 a.m. to 4 p.m. was his office hours? A. No.

Q. You know what time the Courts start? A. 11 o'clock.

Q. You know what time the advocates come to Courts? A. I do not know.

Q. Being such a friend of Mr. Alles you did not know what time he left to go to the Courts? A. No.

Q. You know what time the Courts close? A. 4 o'clock. 20

Q. In October you were given transfer orders to Madulsima? A. Yes.

Q. Madulsima is a junior station? A. No. It is a big station. It is an important planting centre.

Q. How many beds are there? A. I do not know.

Q. How many doctors? A. Only one.

Q. You refused to go there? A. Yes.

Q. You took continuous leave? A. The medical board gave leave. They found me unfit to do the work there. I was having a disease of the heart. 30

Q. You got your transfer orders to Madulsima in October? A. Yes.

Q. You went before a medical board? A. Yes.

Q. Who ordered the medical board? A. The D. M. S. S. I was before that on medical leave.

Q. You were on leave continuously from 22nd October till 24th February? A. Yes.

Q. You were ordered rest? A. Reasonable rest.

I was under orders to go to Dambulla on 21st October. I was on leave from 21st October till 24th February. 40

Q. You were ordered rest? A. Yes.

Q. In spite of that you were dancing? A. That was at the Police and Medical dance.

Q. What date was the medical board? A. Early December.

Q. They said you had heart trouble? A. Yes.

Q. The Medical dance went on till the early hours of the morning?
A. Yes.

Q. You were one of the organisers? A. Yes.

Q. You had been working in the hospital for 4 or 5 years?
A. 6 years.

10 Q. I am putting it to you that you got leave and stayed over in Colombo in order to go and see plaintiff more frequently in the absence of 1st defendant? A. No.

Q. I put it to you earlier that you were aware when Dr. Frank Gunasekera visited of the conception of this lady? A. I deny that.

Q. You heard Dr. Wickremasooriya giving his evidence? A. Yes.

Q. He stated that he asked her the date of her periods on the first date of his examination of her on 23rd October—that she was unable to give the date. He also told us that he examined her in November and she did not mention then about the periods? He says she mentioned about her
20 periods on the 17th December. By the 17th December the lady had spoken to you and come to an agreement what date she was to fix?
A. No.

Q. You as a doctor know the period of gestation? A. Yes.

Q. You have studied? A. 22 years ago.

Q. At Dambulla you did midwifery work? A. Yes. There was no private practice. There was a midwife and matron.

Q. At Dambulla you were the only doctor? A. Yes.

Q. Before you became anæsthetist where were you? A. At Undugoda.

30 Q. Was there private practice? A. A little.

Q. When ladies wanted.....? A. I did not practice

Q. You were the only doctor at Undugoda? A. Yes.

Q. Before that you were at? A. Batticaloa.

Q. Before you came to Colombo you were practising as a doctor in different outstations? A. Yes.

Q. You know something about periods of gestation? A. Yes.

Q. Had this dispute not arisen by about the middle of December?
A. I do not know.

40 Q. You do know that it was two days later that Mr. Alles left the house? A. He left on the 19th.

Q. I am putting it to you that this lady fixed on the dates she was going to give Dr. Wickremasooriya after consultation with you? A. I never advised her at all,

No. 31
 Added-
 Defendant's
 Evidence
 Dr. Samahin
 Cross
 examination
 —continued.

- Q. On the 5th December was the Police dance? A. Yes.
- Q. You took her to that dance? A. Yes.
- Q. You were at the Club till about 9-30 or 10 p.m.? A. Yes.
- Q. You said you were a keen dancer? A. Yes.
- Q. You said you used to go to the Medical and Police dance and almost every week you went to the G. O. H. or G. F. H.? A. Almost every week. I go to the dances late.
- Q. How long did the Police dance go on? A. I went late. I usually go to the Club have a few drinks and go to the dance. I go late because I know my partners will be there. 10
- Q. On this occasion you had spoken to these parties on the evening earlier—you had spoken to Mr. & Mrs. Alles earlier in the evening? A. About 7-30.
- Q. They had decided not to go? A. Yes, but he asked me to take his wife as she was willing to go but that he could not go.
- Q. Did you know that she had left the house that morning? A. No.
- Q. You said he said he could not go but asked you to take his wife? A. Yes.
- Q. Later in the evening she rang you up? A. Yes. 20
- Q. She rang you up about 10 p.m.? A. Yes.
- Q. It was sheer good fortune she got you? A. No. I would be there about that time she knew. I was leaving because I was going to the dance. She asked me to come. She said that her husband was going away with the Namasivayams and had informed her that she could go to the dance if I would take her.
- Q. Then she rang you up and asked you to take her as 1st defendant was going with the Namasivayams? A. Yes.
- Q. Did you find out what time the husband had gone? A. No.
- Q. She was ready for you at the time you went? A. Yes. 30
- Q. Then you went to the dance? A. Yes.
- Q. You came away after the dance? A. About 2 a.m. or so.
- Q. Before he did? A. I do not know.
- Q. When you got home was Mr. Alles there? A. No.
- Q. Where did the lady get down? A. At the gate; she got down and walked.
- Q. Did she mention that the husband was displeased? A. No.
- Q. You remember the Silver Wings Carnival? A. Yes, that was two days later.
- Q. There again you asked them both? A. Yes. 40
- Q. Mr. Alles said he could not come? A. Yes.

Q. Then what happened? A. Sunday I had lunch with them.
Mr. Alles said he was going with Namasivayams to the Silver Wings and asked me to come along with his wife to the same place.

No. 31
Added-
Defendant's
Evidence
Dr. Samahin
Cross-
examination
—continued.

Q. That was all the conversation that took place? A. Yes.

Q. On the question of the Silver Wings Carnival? A. Yes.

Q. He mentioned the fact that he was going to the Silver Wings Carnival and asked whether you could bring his wife along? A. Yes.

Q. You are not making any suggestion of impropriety between Mrs. Namasivayam and 1st defendant? A. I knew they were very friendly.

10 Q. Did you not ask him why he was not coming with his wife? A. I did not ask him that.

Q. You are certain that was the position? A. Yes.

Q. What time did you go there to take her away? A. 7 or 8.

Q. He was not there then? A. I can't say. I am not sure.

Q. He was not at home when you took her to the Silver Wings Carnival? A. No.

Q. You met him at the carnival? A. Yes, at one of the stalls.

Q. Did you dance? A. No.

Mr. Alles was there with Mrs. Namasivayam. Mr. Namasivayam was
20 there with Ruby Peter.

Q. Dr. Samahin you told me in the morning that you were not making any suggestions.....? A. I had made a mistake this morning when I said I was not making any suggestion between 1st defendant and Mrs. Namasivayam.

Q. You told me that you had not given instructions to that effect?
A. That was a mistake.

Q. That is the evidence which you gave just before luncheon? A.
Yes.

80 Q. You were asked by me specifically a number of questions which you said were not on your instructions? A. Yes.

Q. You saw your counsel give to Court to initial typewritten instructions? A. Yes.

Q. You had a talk with your proctor? A. Yes, I spoke to my proctor.

He showed me the copy of those instructions and those instructions were there.

Q. Did you give the instructions or did you not—which is the truth?
A. I gave the lawyers the same instructions.

40 Q. That is suggesting that 1st defendant was having immoral relations with Mrs. Namasivayam? What is your case now? A. I said I met him there alone.

No. 31
 Added-
 Defendant's
 Evidence
 Dr. Samahin
 Cross-
 examination
 —continued.

Q. I am talking about the suggestions which you denied in the morning and which you now admit? What is the position you are taking up? What are the instructions you have given? (Witness hesitates).

Q. It is your case that Mr. Alles to enable him to go with Mrs. Namasivayam threw you into the company of his wife? A. It may be so.

Q. With the intention of enabling you to misconduct yourself? A. Not to misconduct.

Q. My suggestion is that he could not take his wife to go along with the Namasivayams because his wife had fallen out with the Namasivayams? 10

Q. On the 18th April his wife had not fallen out with the Namasivayams? A. No.

Q. Right up to that time they were on good terms? A. Till 18th April.

Q. And after that also? A. Yes.

Q. Your suggestion is that he was throwing you into the company of his wife in order to enable him to go with Mrs. Namasivayam? A. Yes.

(Evidence put to witness.)

Q. Do you say that 1st defendant misconducted himself with Mrs. 20 Namasivayam? A. I am not in a position to make that statement.

Q. In 1940 being in love with Mrs. Namasivayam he left you with his wife? A. I do not know what his motive was.

Q. In 1940? A. Not in 1940.

Q. What period do you say this happened? What period do you say he threw you into the company of his wife for him to go with Mrs. Namasivayam? A. The period after he returned from Jaffna.

Q. There was nothing improper before that? A. No.

Q. His relations with Mrs. Namasivayam were proper till he returned from Jaffna? A. Yes. 80

Q. Including the 18th April? A. Yes.

(Previous evidence put to witness).

Q. Are you suggesting that in 1941 January that he was making a beeline to Mrs. Namasivayam? A. He was going there.

Q. You know what a beeline means—do you not? A. Yes—I did not use the expression.

Q. In the morning you said those were not your instructions? A. Yes.

Q. Now you say that your instructions are up to his return from Jaffna there was nothing improper? A. Yes. 40

Q. This is in January, 1941? A. Yes.

Q. Are you making any change in your position or do you still stick to it that this was after his return from Jaffna? A. Yes.

Q. Is it that you gave no instructions at all or is it that you instructed that after his return from Jaffna he was in love with Mrs. Namasi-
vayam? A. I had given definite instructions.

Q. That after he returned from Jaffna his behaviour with Mrs. Nama-
sivayam left something to be desired? A. Yes.

Q. What is your suggestion that you are making before January,
1941? A. There was something improper before.

Q. Before when—1941? A. All throughout 1941.

Q. When you said that his relations were improper after he returned
10 from Jaffna that is incorrect? A. Yes.

Q. Did you give instructions that he deliberately got Mr. Namasi-
vayam to go to Bandarawela along with his wife so that he could be with
Mrs. Namasi-vayam alone to commit adultery? A. Yes.

Q. You gave those instructions before the answer was filed? A.
Yes.

Q. You have pleaded nothing by way of condonation or connivance?
A. Yes.

Q. What is the suggestion you are making that he was in love with
Mrs. Namasi-vayam—are you suggesting that in order to more easily carry
20 on an intrigue with Mrs. Namasi-vayam he left you in charge of his wife?
A. Yes.

Q. Are you suggesting that by way of extenuation of your conduct
or by way of justification of your conduct?

(Mr. Obeyesekera objects. I uphold the objection.)

Q. Are you putting this forward in extenuation or justification of
your conduct in being so frequently in the Company of his wife? A.
Kindly repeat the question.

Question repeated. A. No.

Q. If this was your case why did you say something diametrically
30 opposite in the morning? A. I have seen the instructions I have given
to my proctor and I found that I gave those instructions.

Q. You knew what your case was from the beginning? A. Yes.

Q. You knew the case you wanted your counsel to put forward on
your behalf? A. Yes.

Q. You have attended consultations with your counsel? A. Yes.

(To Court :

Q. Did you know that a husband who is asking for a divorce from
his wife will not be able to get his decree if he has proved himself to be
guilty of misconduct? A. I do not know that.)

40 Q. Never transpired at your consultations? A. No.

Q. You told your lawyers all these things? A. Yes.

Q. Were you asked whether you had any proof of adultery? A.
Yes.

No. 31
 Added-
 Defendant's
 Evidence
 Dr. Samahin
 Cross-
 examination
 —continued.

Q. Were you told by them that if you could prove that he was guilty of any matrimonial offence he could not get the relief he asked for? A. I was not told that.

Q. You seriously suggest that you were not told that by your counsel? A. Yes.

Q. Were you asked on what basis you were making these suggestions? A. I had no proof I said.

Q. You said these were mere surmises? A. Yes.

Q. And you had not a shred of evidence to support the suggestions? A. Not enough evidence. 10

Q. What is the evidence you have? A. The letters that he has written to his wife.

Q. You had by the time you gave instructions to your lawyers—you had read the letters written to his wife? A. Yes.

Q. When did you read the letters that he had written to his wife? When before you gave instructions to your lawyers did you read the letters to his wife? A. I read the letters after I gave instructions.

Q. I asked you whether you had a shred of evidence to support this—you said you had read the letters; at the time you gave the instructions what was the evidence you had? A. I had no direct evidence. 20

Q. At the time you gave instructions had your answer been filed? A. No.

Q. Can you explain why in the answer the suggestion that 1st defendant was guilty of adultery was not stated? No answer.

Q. What was the evidence you had at the time you gave instructions? A. I knew he had gone.

Q. Who were your informants? A. He said the previous date he wanted the car. That was on the 18th.

Q. On the 18th all parties were there—there was nothing clandestine about it? A. No. 30

Q. In order that he might find the time to philander with Mrs. Namasivayam he threw you into the company of his wife? A. Yes.

Q. What is the evidence you have that leaving you with his wife he went about with Mrs. Namasivayam—you have not seen it yourself? A. No.

Q. No one has told you? A. No.

Q. No one has told you this whom you are able to call? A. No.

Q. Not a single person? A. No.

Q. You are making this purely on your own surmise? A. Yes.

Q. You suggested that arrangement was made that Mr. Alles welcomed that suggestion in order that he may enjoy the undisputed company of Mrs. Namasivayam? A. Yes. 40

Q. You make that suggestion also on surmise? A. Yes.

(Previous evidence put to witness).

Q. Mr. Alles asked Mrs. Namasivayam to remain? A. Yes.

Q. You suggest that Mr. Alles asked her to remain? A. Yes.

Q. You told us the reason why she stayed was there was a miscarriage? A. Yes. I know about that.

Q. When was the miscarriage? A. About 2 months earlier.

Q. Did you hear Mr. Alles ask Mrs. Namasivayam to remain behind in Colombo? A. Yes.

10 Q. At the party? A. Yes.

Q. Why did you tell me in the morning that was not so? You were on oath in the morning? A. I was a bit flurried in the morning.

Q. You are not flurried now? A. No.

Q. You have had time to discuss with your proctor and you are not flurried now? A. No.

Q. You told us a minute ago that with regard to the Silver Wings Carnival at lunch the only conversation with regard to the carnival was when Mr. Alles said that he was going with the Namasivayams and he asked you to take his wife out? A. Yes.

20 Q. You told me that was the only discussion with regard to the Silver Wings Carnival? A. Yes, there was at the time the discussion about our going to the promenade concert.

Q. I put it to you specifically whether you invited 1st defendant?
A. He had made arrangements to go. I did not invite him.

Evidence put to witness.

Q. Were those your instructions? A. Not that.

Q. You did not give those instructions? A. No.

Q. Can you tell us then whose instructions those are? A. I can't answer that question.

30 Q. Is it possible that just as you mistook the instructions given earlier you are mistaken in regard to this? A. No.

Q. You are definite in regard to this matter—that is not a correct position? A. Yes.

Q. You did not instruct your lawyers that he said he was too busy to go to the Silver Wings Carnival? A. I think it was the medical dance.

Q. Did you call again on the way to the Orient Club? A. In the evening?

Q. Yes. A. I did not go to the Orient Club.

40 Q. My instructions are that on the way to the Orient Club you called? You went there to lunch? A. Yes.

Q. You went there and took the lady out? A. Yes. At about 7 or 8.

No. 31
 Added-
 Defendant's
 Evidence
 Dr. Samahin
 Cross-
 examination
 —continued.

Q. Did you go there on the way to the Orient Club? A. No.

Q. If counsel says he had instructions to put that—it is not correct?

A. Yes.

Q. You suggest that he deliberately told you that he wanted to go with the Namasivayams and that you had better take his wife out? It was a sop to his wife to enable him to go with the Namasivayams? A. Yes.

Q. You were deliberately taking his wife away to enable him to go out with Mrs. Namasivayam? A. Yes.

Q. You admit that? A. Yes.

10

Q. You were obliging a friend by taking his wife to enable him to have a clear run with Mrs. Namasivayam? A. Yes.

Q. He wanted to be in the company of the Namasivayams and he wanted you to take his wife out—you appreciated that and realised that to be the position when you took his wife out? A. Yes.

Q. Dr. Samahin did you then think this man is going about with another man's wife: I am obliging him by keeping his wife away there is no objection in my going one step further? A. I did not consider that.

Q. You did not think you yourself would be justified in misconduct-20 ing yourself with 1st defendant's wife?

(Mr. Obeyesekere objects. I think the question had better not be put.)

Q. You knew this right through from January, 1941? A. Yes.

Q. With this knowledge of the fact that Mr. Alles wanted you to amuse his wife this fact was in your mind this knowledge was available to you when you were visiting her when Mr. Alles was away in parties? A. Yes.

Q. During that period you were aware of the fact that Mr. Alles wanted you to help him by keeping his wife occupied? A. Yes. 30

Q. When did this idea dawn on you? A. Sometime in January 1941.

Q. Certainly before he went to Jaffna? A. Yes.

Q. When he went to Jaffna he asked you to look after the girls with the same intention? A. No such intention because he was away.

Q. Mrs. Namasivayam was not in Jaffna? A. No.

Q. When first did you begin to realise that Mr. Alles wanted his wife occupied so as to have his hands free? A. Somewhere in 1941.

Q. Early in January? Can you tell me any particular incident which made you draw this inference? A. April incident. 40

Q. The January incident? A. I can't remember any particular incident.

Q. You heard Mr. Alles testify that he had never been out in the company of Mrs. Namasivayam except when her husband was about with one special exception 18th April? A. I heard the evidence.

Q. You are not prepared to dispute that? A. No.

Q. Do you know even now that on the 18th April the child was left at Mrs. Namasivayams? A. Yes.

Q. There were other places in which the child could have been left? A. Yes.

Q. Mr. Namasivayam was such a good friend of the family that Mrs. 10 Alles concurred in the arrangement? A. I do not know.

Q. Even now you do not know? She was agreeable to that? A. The child was sent there.

Q. Did you tell the plaintiff when you met her—did you put her on her guard? A. No.

Q. She was not aware of this? A. No.

Q. She was not aware that her husband was too friendly with Mrs. Namasivayam? A. I did not discuss with her.

Q. That you were being made a sort of convenience to get his wife away to enable him to indulge in his amours? A. No.

20 Q. Did you not think it your duty to tell her? A. No.

Q. Did you discuss this matter with Mr. Alles? A. No.

Q. Did you not tell him he was not fair to his wife? A. No.

Q. Did you not tell him that his chances of getting confirmed in the Attorney-General's Department were in jeopardy? A. No.

Q. Did you tell him "I feel what you are doing is wrong"? A. No.

Q. You realised that it was an improper thing he was doing? A. Yes.

Q. You assisted him by looking after his wife? A. Yes.

Q. What time did you get back from the Silver Wings Carnival? 30 A. About 10-30 or 11.

Q. Mr. Alles has sworn that he had returned and was fast asleep when his wife returned? A. I do not know that.

Q. Then came the Medical dance? A. Yes.

Q. You heard Mr. Alles say you telephoned him to the Law Library? A. I did not.

Q. Did you invite Mr. Alles for the dance? A. Yes.

Q. Where? A. At Merlton.

Q. He refused? A. No, he accepted the invitation.

Q. You are sure about that? A. Yes.

40 Q. An invitation would mean that you were going to pay for the tickets? A. I had bought the tickets.

No. 31
 Added-
 Defendant's
 Evidence
 Dr. Samahin
 Cross-
 examination
 —continued

Q. When did you offer the invitation? A. A few days before the dance.

Q. How much did you pay altogether? A. There were six in the party. I paid Rs. 30.

Q. How many ladies? A. four.

Q. He accepted the invitation? A. Yes.

Q. Had you got the tickets by then? A. Yes.

Q. Did you give them the tickets? A. I had the tickets with me.

Q. He says that he very curtly refused your invitation? A. He did not refuse. 10

Q. You say that is not true? A. No.

Q. When you went on the night of the dance why did you not tell him the tickets were available? A. Because he said he was very busy; I did not want to press him.

Q. At this date was the 1st defendant in the Attorney-General's Department? A. No.

Q. You also told us that during this period there were several days he did not go to Hulftsdorp? A. Yes.

Q. You told us that he had several papers before him—was it on this occasion? A. Yes. As I walked in he was seated in the office 20 room at his writing table having some papers before him. He said he was very busy and could not go.

Q. You also told us that 1st defendant invited you to dinner? A. Yes.

Q. When did he invite you? A. At that time.

Q. You had not gone there by invitation for dinner? A. No.

It was understood that we were to have dinner there and go for the dance.

Q. Had you been there earlier? A. If not that day the previous day. 30

Q. 1st defendant had invited you to dinner on that occasion? A. Yes.

Q. You had been invited by the 1st defendant? A. Yes.

Q. The medical dance was on the 19th? A. I invited him a couple of days before.

Q. You invited him to the dance not in November? A. No.

(Counsel reads previous evidence.)

That is not correct.

Q. You invited him and asked him how many tickets you should get for him? A. No. I got the tickets and invited him. 40

Q. Dr. Wickremasooriya had been called in on the 15th or 22nd November. You had not invited him before that? A. No,

Q. Did he at any time tell you that he was going to the dance with the Namasivayams? A. No.

Q. Are you suggesting that he refused the invitation because he could not take the Namasivayams along? A. He never refused the invitation. He refused the invitation only that night.

No. 31
Added-
Defendant's
Evidence
Dr. Samahin
Cross-
examination
—continued

Evidence put to witness.

That is utterly false? Those are not your instructions? A. No.

Q. Are you quite sure? A. Yes.

Q. Was there any discussion about Mrs. Namasivayam having you
10 to take her to the medical dance? A. No.

Q. Those instructions were not given by you? A. No.

Q. Had he invited the Ludowykes' for dinner? A. No. Our arrangement was that we were to meet them. He had asked me to dinner.

Q. How many days before? A. A day or two before.

Q. Was it at the time you offered him the invitation? A. Yes.

Q. He accepted the invitation? A. Yes.

Q. He said come along we will have some dinner and we will go
along come here to dinner? A. Yes.

Q. You had no idea that he was making preparations to leave the
20 house? A. Yes.

Q. You suggest he definitely told you to have dinner? A. Yes.

Q. You did not press him to go to the dance? A. No. I tried to persuade him. He refused.

Q. You went to the dance with Mrs. Alles and the rest of them?
A. Yes.

Q. You had to wait a little time till the dance was over? A. Yes.

Q. You dropped Mrs. Alles first? A. Those were the two ladies
I brought. I waited till they went to the verandah and then I started off.

Q. You did not know at all that day that Mr. Alles had left the
30 house? A. No.

Q. You are sure about that? A. Yes.

Q. When did you first know that Mr. Alles had left the house? A.
Next morning.

Q. How did you get to know? A. Plaintiff informed me.

Q. Did you go round? A. Yes.

Q. Plaintiff informed you by telephone? A. Yes.

Q. What day of the month? A. 20th.

Q. Could you tell me when your telephone was disconnected? A.
Somewhere in November.

40 She telephoned me to the Club. After leaving them I went straight
to the Club. She rang me up at the Club that morning.

Q. Did you go round? A. Yes.

No. 31
 Added-
 Defendant's
 Evidence
 Dr. Samahin
 Cross-
 examination
 —continued.

Q. Did she show you the letter he had written? A. Yes.

Q. What time was that? A. About 8 a.m.

Q. You had gone round straight from that place to the club to continue enjoying yourself the following day being your birthday? A. Yes.

After the dance I felt like going to the Club. That day happened to be the dance night.

Q. Do you observe your wife's birthday? A. No. We do not usually observe birthdays.

Q. Does she observe your birthday? A. No.

Q. Did you not think it nice to be with your wife that morning? 10
 A. It happened that day to be the medical dance.

Q. Did you expect people to be playing bridge at that time? A.
 Yes.

Q. More often than not you spend the whole night playing bridge?
 A. Yes.

Q. This is while you were on sick leave? A. This was one particular occasion.

Q. She telephoned to you about 8 o'clock you must have been in your dress clothes? A. I went home changed and went straight round.

Q. You remember distinctly it was 8? A. Yes. I went there 20
 about 8. I can't say when I saw the letter.

Q. You went there she was there and she told you what happened?
 A. Yes.

Later that morning I saw the letter.

Q. Did she tell you how she got it? A. I can't say.

Q. Where did she produce the letter from? A. I can't say.

Q. Did she go into the room and bring the letters? A. I can't remember the details.

Q. Between 8 and 9-30 you were there how long? A. About 1
 hour. 30

Q. While you were there she showed the letter? A. Yes.

Sgd. R. F. DIAS,
 D. J.

Case postponed for tomorrow.

Sgd. R. F. DIAS,
 D. J.

19-1-43.

Counsel as before.

T. S. SAMAHIN, affd.

Q. You were telling me that there was a telephone message sent to 40
 you on the morning of the 20th at 8 a.m.? A. Between 8 and 9.

Q. You were still in your evening dress? A. Yes. I had to go home and do a change and come. I stayed there about 1½ hours. And during that time a letter that Mr. Alles wrote was shown to me.

Q. Did you call subsequent to that date? A. No.

Q. Ultimately she left Merlton on the 31st? A. I am aware of that.

Q. Between the 20th and 31st you paid no visits? A. No.

Q. Are you certain of that? A. Yes.

Q. And you are certain you saw that letter at that time? A. Yes that morning. That is the letter P2.

Q. After 31-12 did you meet the plaintiff? A. No.

Q. Did you meet the plaintiff at Dr. Rutnam's one night in January? A. No.

Q. You heard the evidence of Pabilis that you came there one night after the Rutnams had gone to the pictures and that you took the lady out? A. No, I never went to Dr. Rutnam's.

(To Court :

Q. Can you give any reason why Pabilis is giving that false evidence? A. No.

Q. Is it suggested that he is giving evidence for a money payment? A. It is possible but I do not know.)

This is what he has said, on one occasion the 2nd defendant came at about 10 p.m. Plaintiff was there. Dr. & Mrs. Rutnam had gone to the pictures. I saw plaintiff and 2nd defendant go out in 2nd defendant's car and came back before the Rutnam's returned. There is a telephone at Dr. Rutnam's? A. No I never went there and she never telephoned to me from Rutnam's.

On 28-2-42 I assumed duties at Dambulla. I left Colombo on the 23rd.

Q. It was your invariable practice you said to go to Bandarawela or Nuwara Eliya for Easter and that Easter 1942 you did not go? A. No because I could not get leave.

Q. Did you come down to Colombo during Easter 1942? A. Yes.

Q. You called at the nursing home on the 5th April? A. No.

I was in Colombo on the day of the air raid but I did not go there.

Q. Did you send flowers to the nursing home? A. No.

Q. Dambulla hospital has a telephone with an extension to the Medical officer's quarters? A. No, there is no extension. Telephone No. 2 Dambulla is the number but there is no extension to my quarters. The Directory shows an extension but that was removed for military purposes. It was removed in February about the time I went there.

Q. Did you receive any telephone calls there from Dr. Allen Rutnam? A. No.

No. 31
 Added-
 Defendant's
 Evidence
 Dr. Samahin
 Cross-
 examination
 —continued.

Q. In May? A. No.

Q. On the 7th May? A. No.

Q. On 1-6-42? A. No.

Q. On 30-7-42? A. No.

Q. On 31-7-42? A. No.

I had trunk calls but not from the nursing home.

Q. 'I am referring to calls between Colombo and Dambulla, No. 9928 and No. 2 Dambulla? A. No.

(To Court :

Q. Between 7th May, 1942, and 31-7-42 you were the doctor at 10 Dambulla? A. Yes.

Q. Can you explain those calls, I think there were four calls put through to your hospital from Dr. Rutnam's bungalow? A. There were some calls but I was not there to answer them. My apothecary told me something. There was a note on the table that there were trunk calls from 9928 but I did not answer them.

Q. Was there any business that necessitated any trunk calls from Dr. Rutnam's hospital to your hospital? A. No.)

Q. You were not there to take the message? A. No. It takes about six minutes to come from the bungalow to the hospital 20

Q. Two of those calls were six-minute calls? A. I do not know. I can throw no light at all on them.

Q. Did you meet the lady after that in Colombo? A. No.

Q. Were you with the lady and her child at the Sundae Tea Room on 29-9-42? A. No.

On 29-9-42 I was at Galle. I had just arrived there to assume duties.

Q. You said yesterday that during Mr. Alles' absence in Jaffna you have been out with the lady during the day shopping and at nights you went out only on a Sunday once or twice a month to a dance? A. Yes.

Q. Do you make any exceptions to that, did you go anywhere else 30 at night with her? A. Yes probably called on some friends in the evening between 6 and 7-30.

Q. You can remember no occasion when you took her out and stayed out later than 7-30? A. We went to a function at Col. Lionel Kotalawela's at Kandewella.

Q. Do you remember a party at Dr. C. O. Perera's? A. I cannot remember.

Q. Dancing? A. No. I have never been to his place for a dance

Q. Any party? A. No. Never.

Q. I put it to you that on one occasion in March Merita and the 40 child were left at Mrs. Marcelline de Costa's place and you went with the lady to Dr. C. O. Perera's? A. No.

No. Q. The child and Merita were fetched the following morning? A. No. 31
 Added-
 Defendant's
 Evidence
 Dr. Samahin
 Cross-
 examination
 —continued.

I have been a member of the Orient Club for a long time.

Q. Occasionally there have been a little unpleasantnesses also at the Club and you have been found fault with? A. Never.

Q. That is exclusively a man's Club? A. Yes.

Q. Do you remember any occasion when there was trouble over your taking ladies there? A. Yes on one occasion.

Q. That was a party that comprised you Mrs. Alles a Mrs. Staples and another lady? A. No. Mrs. Alles was not there. There was only one lady in the party. It was not the plaintiff.

Q. Did you take the plaintiff to the 20th Century Club? A. No. I have not heard of that Club and I have never been there.

Q. You told me you saw that letter on the 20th morning? A. Yes (Shown 1D16). This is a certificate of posting. The post office stamp is 9-30 a.m., 20-12? A. Yes.

Q. That is the certificate of posting on a letter from Mr. Alles to Mrs. Alles with the full address? A. Yes.

Q. Look at the stamp? A. 9-30 a.m., 20th.

20 Q. This I am putting to you is the certificate of posting of the letter that was received—P2. She got two letters one was registered. Do you know at what time the post office opens for registering letters? A. 10 o'clock.

Q. Are you suggesting that these letters were sent on the previous day? A. No.

(To Court :

Q. You say that on the 20th December at 9 a letter written by the husband to the wife was shown to you? A. Yes.

Q. At that time the letter had not been posted? A. I was there 30 a couple of hours and I certainly did see a letter that morning.)

(Shown 1D13). I know nothing about this.

Q. Now with regard to this trouble at the Orient Club was no question raised about your being brought before the Committee on any occasion? A. I was asked to explain and the matter dropped.

Q. You apologised? A. Yes.

Q. There was a meeting held to consider your expulsion? A. I do not know.

The Secretary wrote to me a letter and I explained and the matter was dropped. I said I was sorry and I did not know that the rules did 40 not permit me to bring a female to the Club. The charge was that I brought a female to the Club. There are ladies' days in the Club but this was outside that. Apart from that I had no trouble with the Club.

No. 31
 Added-
 Defendant's
 Evidence
 Dr. Samahin
 Cross-
 examination
 —continued.

Q. It is admitted that Mr. Alles has had financial difficulties. And it was suggested that he is bringing this action to recover Rs. 25,000 from you to pay those debts. That was put to him by your counsel? A.

Well that is what he is claiming.

Q. Is there any possibility of his getting Rs. 25,000 from you? A. Well I earn over Rs. 1,000 a month.

(To Court :

Q. If judgment goes against you for the full amount can you pay?
 A. I do not have the cash now.)

Q. Have you any property whatever? A. No. 10

Q. You have debts? A. I have.

Q. You borrowed money quite as frequently as Mr. Alles? A. No.

Q. Have you borrowed from Chetties and Afghans? A. Yes.

Q. You have a bank account? A. Yes.

Q. Your cheques have been dishonoured? A. One or two.

Q. And chiefly cheques with which you paid your card debts? A. Yes chiefly.

(To Court :

The amount of my indebtedness now is about Rs. 2,000.)

Q. Your car was seized? A. Yes I paid the whole amount and took the car back.

(To Court :

Q. Were you reported to Government? A. They asked for an explanation and I provided it.

Q. You were reported as a debtor? A. Yes.

That was in January, 1941.)

Q. Your position now is no better than then? A. I am in a much better position now. There is one unsatisfied judgment against me now for Rs. 1,800.

Q. Have you saved money? A. I have a little now. 30

Q. You have not paid the Rs. 1,800 yet? A. No.

Q. Where is this money that you saved? A. In the Bank of Ceylon.

Q. What is the state of your account today? A. About Rs. 2000—round about that.

I have only one banking account.

(Shown a paper). Do you remember this gentleman being brought in there as a guest introduced by the 2nd gentlemen mentioned there?
 A. Yes.

Q. In the earlier part of the play he gave you cash in exchange for your cheques? A. Yes, cheques were passed. 40

Q. During the latter half of the night when he was losing and he tried to give back your cheques nobody would take them? A. No I do not remember that.

Q. Do you remember there was trouble about that? A. Yes, but that was subsequently.

Q. The trouble was created by the gentleman who introduced him? A. He told me about it.

Q. He is an advocate? A. Yes.

Q. He created trouble later and the trouble was owing to the fact that while that gentleman was winning he cashed your cheques and when he lost nobody would take your cheques in return and he could not go further in the game? A. I do not know but he got his money back alright.

Q. From? A. The cheque.

Q. Was the cheque honoured on presentation? A. Not on the first occasion but the second time it was alright.

Q. He also threatened to bring the matter up—the gentleman who introduced the guest? A. No he only spoke to me.

Q. He did not threaten to bring up the matter before the committee of the Club. The amount of the cheque was Rs. 150 or Rs. 200.

Q. When it was presented at the bank you did not have the money to meet it. That was your financial position and now you say you have Rs. 2,000? A. Yes.

(To Court :

Q. You are a self-made man? A. Yes.

Q. Before you became a doctor you had no property or anything like that? A. No. I went to England after saving some money.

Q. You married a well-to-do lady? A. Her father is well off.

Q. Mr. Alles knew your financial position? A. Yes.

Q. You and he borrowed moneys together from the same Bhais? A. I do not know that. We have not backed each others notes.

Q. Do you suggest that he has brought this action to recover Rs. 25,000 from you to pay off his debts? A. That is what he has asked for.

Q. The suggestion was put to him that he brought this false action to pay off his debts with the money. Was there any possibility when he brought this action of recovering that money from you? A. Yes, there is still that possibility.

Q. You suggest that is what he contemplated when he brought this action? A. Yes.

Q. Is that the only reason why he has tacked you on and you say that he knows that you had nothing whatever to do with his wife? A. I can suggest that reason only.

No. 31
 Added-
 Defendant's
 Evidence
 Dr. Samahin
 Cross-
 examination
 —continued.

Q. You were an anæsthetist at the General Hospital for five years?
 A. Yes a little longer.

Q. The previous person was Joseph de Silva? A. Yes.

Q. And he was there for 13 years? A. Yes.

Q. They generally do not change the anæsthetist at the hospital?
 A. I was one of four, formerly there was only Dr. Joseph Silva and as the work increased four were appointed. Dr. Joseph Silva worked only in the mornings four times a week and we were whole time anæsthetists.

When I am free I spend most of my time playing cards.

Q. That was your regular routine? A. Yes. 10

Q. You were a very unfortunate anæsthetist towards the end of the period? A. Not more unfortunate than the others.

Q. Matters went so far that questions were put in the State Council about it? A. No I am not aware of that.

Q. You were transferred to Madulsima which is a junior station?
 A. No.

Q. You protested against that transfer? A. Yes.

Q. And you went on sick leave for six months? A. No I protested and they transferred me to Dambulla.

Q. A number of patients died when you were the anæsthetist? A. 20
 No more than in the case of other anæsthetists. Only three or four died for the six years.

Q. Deaths by choloroform? A. While the operation was going on. I cannot say whether the patients died of the operation or the anæsthetic. In every case of death under an anæsthetic is inquired into and an inquest is held.

Q. You say there were four deaths during the time of your career, all came together during the last how many months?

(Mr. Obeyesekere objects. I think the evidence is on the border line 30 but I think they can be put. Mr. Wickremanayake now in answer to me says that these questions are being put on the witness' credit. Mr. Obeyesekere asks to be heard. Mr. Wickremanayake is heard. Says the evidence proves that the man is drinking and playing cards and dancing and neglecting to do his job. I think the evidence is on the border line. I think the questions had better not be put.)

Q. You told us yesterday that you spent the night of the 18th April at Bandarawela? A. Yes.

Q. And you said definitely that Mrs. Jayewickrema asked you to lunch the following day? A. Yes. 40

Q. I put it to you specifically that Mrs. Jayewickrema was not up and about and you did not see her before you left that house? A. I saw her in the morning.

Q. She did not invite you to lunch? A. She did.

Q. Your story that you lunched there is false? A. Oh, we did lunch there.

Q. Mrs. Jayewickreme can bear you out? A. Yes.

Q. In 1940 during the raid you were in Colombo? A. Yes, I was on two or three days' leave.

When I went to Bandarawela in 1941 it was on three days' casual leave.

Q. Your position is that these charges of adultery are utterly false?

A. Yes.

10 Q. And that the evidence is a tissue of falsehood? A. Yes.

Re-examined.

Q. You were cross-examined about the promenade concerts? Yes they were at the Galle Face Hotel between 6-30 and 8-15.

Q. Is there a charge? A. No. Anybody can come there. It is only a question of ordering drinks if you are so disposed.

Q. Always on Sundays? A. Yes only on Sunday evenings.

They are largely attended and people of all kinds come there.

(To Court :

Q. Do you sit there or promenade? A. You sit in the hall.)

20 After the promenade concert we generally go for dinner somewhere and then come to the G. O. H. dance. The dance would be from 9-30 till about 1.

Q. That was in the days when you were friends your regular programme so to speak? A. More or less.

(Shown page 51 of 2D4). I remember I called the Court's attention to this. This is an entry by Dr. Willenberg. What exactly has happened, how has he come to make that entry? A. When the diary was produced before him that day he found a few dates not entered up. I do not know who takes the book to him. It is taken from the staff room to him.
30 It is kept in the staff room and taken from the staff room to him periodically—one a week. It had happened that during that week I had not entered up a few days.

Q. Where do you enter that? A. In the staff room.

Q. Does Dr. Willemborg in fact scrutinise that diary? A. Yes he does.

Q. Now turn to page 82—13th April. There is an entry here three days' casual leave—10th to 12th. The 13th was a Sunday. And on the 14th you had made an entry that you were at work from 8 to 12 noon?

A. Yes.

40 Q. It was suggested that that was a false entry? A. Yes.

Q. Was there any reason in April, 1941, for you to make any false entry? A. No.

No. 31
Added-
Defendant's
Evidence
Dr. Samahin
Cross-
examination
—continued.

No. 31
Added-
Defendant's
Evidence
Dr. Samahin
Re-
examination

No. 31
 Added-
 Defendant's not.
 Evidence
 Dr. Samahin
 Re-
 examination
 —continued.

Q. Were you expecting these proceedings then? A. Certainly

Q. That is morning hours? A. Yes.

Q. You say that suggestion is false? A. Yes.

Q. And there was no reason whatever for you to make false entries at that time? A. No.

(To Court :

Q. Can you recollect whether on the 14th April you anæsthetised?
 A. Yes for Dr. Sinnatamby.

Q. How many patients did you anaesthetise that day? A. 8 or 10
 10 and that will appear in the register.

Q. There is a book you have already said called the Surgeon's Opera-
 tion Register? A. Yes.

Q. What details does that contain? A. All the details in the
 anæsthetists' register are entered in that register.

Q. Would the surgeon's operation register help you to trace the
 relative bed-head tickets? A. Yes, the number of the bed-head tickets
 is mentioned there. The bed head ticket is kept in the ward and entered
 by the house surgeon.

Q. And the nurse? A. No. For the temperature there is a 20
 separate chart.

(To Court :

If a patient was entered on 10th and remained in the hospital and on
 the 12th she was operated on and I anæsthetised, the bed-head ticket will
 show that on the 12th she was operated and the name of the surgeon, the
 name of the anæsthetist the time and the duration would be given. That
 would be entered by the house surgeon.

Q. You can trace the bed-head ticket as soon as you get the name
 of the patient from the surgeon's register? A. Yes the number is
 entered in that register.) 30

Q. Is it possible then to check up the entries in your diary from the
 register? A. Yes.

Q. You told the court the circumstances in which you removed that
 diary? A. Yes.

Q. You said also that you had then ceased to be an officer of the
 General Hospital? A. Yes.

Q. Is the fact that you had removed the diary in those circumstances
 known to the Medical Superintendent? A. Yes now.

Q. Have you been called upon to explain that? A. No.

Q. Censured or reprimanded? A. No. 40

Q. It has not been taken up in any way? A. No.

(To Court :

Q. Do you know whether action has been suspended while this case is being tried? A. No, I do not know that.)

(Shown 1D8 of 30-10-42.)

Q. You told the court you went to India towards the end of 1941?

A. Yes on 24-10-42 I took my father-in-law for treatment there and I returned on 25-11. I was away for a month. 1D8 was written while I was in India.

Q. And promptly you became aware that that book was wanted did you take steps to return it? A. Yes I took steps to have it returned.

Q. Tell the court why precisely you took that register? A. I wanted to fix the dates that I had taken leave in 1941.

Q. You removed the register after summons had been served on you? A. Yes.

(To Court :

Q. The leave taken by a public officer is a matter of record in the office? A. Yes.

Q. Why take the book? A. This book gives the actual dates.

Q. Surely the office could supply you with those dates? A. If I asked them.

Q. Then why take the book? A. Because it was of no use to anybody else.)

Q. From this book you can say what your off Sundays are? A. Yes. Q. Would the leave register contain that? A. No. Only leave applied for and granted.

Q. Then one item of available from this register was the off Sundays? A. Yes.

Q. Dr. Willenberg's evidence has been that there are occasions when the anaesthetists absent themselves from duty by arrangement with the others without formal application? A. Yes, that is only a day off.

Q. Are those days also shown in this book? A. Yes.

Q. And would not appear in the leave register? A. No.

Q. So that that document contains more information than would be available in the leave register of the office? A. Yes.

(Shown P33.)

This has been written by the 1st defendant on 18-3-41 asking me to redirect his letters. 1st defendant has written to his wife asking me to redirect his letters from Merlton.

Q. Do you swear that you in fact did go daily to redirect the letters? A. Yes.

Q. That involves the period when the wife was away from Colombo?

A. Yes till his return on 9th April.

Q. Did you go regularly? A. Yes.

No. 31
 Added-
 Defendant's
 Evidence
 Dr. Samahin
 Re-
 examination
 —continued.

- Q. Were there letters to re-address? A. Yes.
 (Shown 1D15.)
- Q. You remember Mr. Alles returned on 9th April? A. Yes.
- Q. Did you know he was expected then? A. Yes I knew he was coming on the 9th.
- Q. You had not met him for some time? A. Yes.
- Q. Were you very good friends then? A. Yes.
- Q. Did you make it a point of calling on the 9th April? A. Yes, after I finished my work in the morning. I met him at Merlton.
- Q. What happened that day? A. He was waiting there for Mr. 10 Weeresinghe whom he said promised to call over and make arrangements about the trip. I was there about half an hour and left.
- Q. You went to Bandarawela on the 10th before you went were you aware that 1st defendant was going himself? A. Yes. He told me that on the 9th.
- Q. He was going to Ratnapura and Bandarawela and would meet his wife? A. Yes.
- Q. Did you meet him on the 10th? A. Yes, I went there.
- Q. Certain about it? A. Yes.
- Q. Tell the court what happened? A. I called over at Merlton. 20 I was on leave on the 10th. I called at about 9-30 or 10. Then the 1st defendant was there and he wanted to go out shopping. The shops were open on that day, Maundy Thursday. Mr. Alles had been away for some time from Colombo and he was going up on a holiday and he wanted to purchase a few things and I took him round the shops and we stepped in at the Bristol Hotel and had a couple of drinks. That was about 11-30 before lunch. Then he wanted to see the Ludowykes as he had not seen them for a couple of months at Dehiwala and we went there.
- Q. Do you remember what happened there? A. We met there Mr. & Mrs. Ludowyke and the two daughters. All were there. Mr. 30 Ludowyke was there and was attending to his car being a public holiday. We were there for some time and I believe Mr. Alles took something that he brought from Jaffna for them. He brought some kottakelungus in a box and he asked the Ludowykes to take half and gave me half. We were there about an hour chatting. We were invited to lunch.
- Q. Was any particular temptation held out to you? A. Yes, they knew that I was fond of crab curry and they mentioned the fact that they had crab curry that day and asked me to wait for lunch.
- Q. That is a weakness of Mr. Alles' too? A. Yes.
- Q. Were the crabs sufficiently tempting? A. Well it tempted 40 me but Mr. Alles said he had already ordered lunch at home and he could not wait and I took him back.
- Q. You went up by the night mail that day? A. Yes.

Q. This car of Mr. Namasivayam's which you went to Bandarawela in on the 18th what is the car? A. I think an Opel. It is a large car.

Q. How much room is there for people in the back seat? A. Very comfortable.

Q. Was there room for any more behind? A. No we seated ourselves comfortably.

Q. And it was a long journey? A. Yes.

Q. Where were the suitcases? A. Behind in the luggage carrier.

Q. It was put to you by the court that you might easily have stayed at the Bandarawela Hotel on the 18th night, the charge was nothing much, will you tell the court why you did not do that? A. When we went up to Jayewickreme's and stayed behind for dinner I knew they were expecting two persons and they had treated me so cordially there I thought it would have been churlish on my part to have left the place at about 11 or 12 in the night when there was accommodation for another.

Q. The next day the 19th you got a room at St. Andrews'? A. Yes that is a room that had been occupied previously by Noel and George Welsh.

Q. When was that room placed at the disposal of your party? A. Before we went to the dance.

Q. At about 8 or 8-30 before you dressed? A. Yes.

Q. The whole party dressed in that room? A. No, the men dressed in the room the ladies had removed their things to the bathroom. The bathroom was not attached to the room but you had to go along the corridor to it.

Q. Now would it be correct to say that when you returned from the dance in the early hours of the morning you did not have to turn anybody out? A. No, the room was there at our disposal. Mr. Welsh and Costa I do not know what arrangements they had made they were not there.

Q. Were they at the dance? A. I think so.

Q. Do you know where Welsh is now? A. He is in Bombay I believe. He is not in Ceylon.

Q. Mr. Namasivayam has a certain disability? A. Yes.

Q. What is that? A. A deformity of the right hand.

Q. Can he dress easily? A. Not easily he has got to be helped.

Q. For instance can he manipulate with both hands? A. No, he has to be helped.

Q. That being so was it more convenient for him to dress in the room or outside? A. In the room.

Q. And to change as well? A. Yes.

No. 81
 Added-
 Defendant's
 Evidence
 Dr. Samahin
 Re-
 examination
 —continued.

Q. These extracts from the resthouse register have been shown to you—shown 1D14—page 15. I call the court's attention to the fact that there is only one entry there that these people stayed at that resthouse on that occasion.

Q. Must you pass Beliuloya going to Bandarawela along that route?
 A. Yes from Ratnapura.

Q. And I think it is the most popular resthouse before you get to Bandarawela?
 A. Yes.

As regards 1D15 on 11-4 there are four illegible entries.

Q. Now with regard to the occasion on which Dr. Frank Gunasekera¹⁰ called to examine the lady. You told the court fully the circumstances in which you were present but if it was put to you that you diagnosed her case would that be right?
 A. No I had not examined her.

Q. Now what precisely did you do, did you make a remark?
 A. I made a casual remark to the effect, could it not be anything else.

Q. And what precise ailment were you thinking of?
 A. I was thinking of appendicitis at the time.

Q. Did you mention it?
 A. No.

Q. Would it be correct to say you suggested that as a field of inquiry for Dr. Gunasekere?
 A. Yes. 20

(Mr. Wickremanayake objects leading question. I agree.)

Q. Was there any suggestion of ectopic gestation at that time?
 A. No.

Q. What is ectopic gestation?
 A. I have noticed a large number of cases of ectopic gestation.

Q. Is that a dangerous condition?
 A. It is a very dangerous condition.

Q. Was there any suggestion at all that it could be ectopic gestation?
 A. None at all.

(To Court :

30

Q. Dr. Gunasekere has said that the history and symptoms which he discovered at his examination might have meant three things, one was renal colic, one appendicitis and one was ectopic gestation, do you agree with that?
 A. No. There are many other conditions as for instance gastric ulcer, gall stones intestinal obstruction or pancreatic disease.

(To Court :

Q. Are you suggesting that Dr. Gunasekere did not know his job?
 A. No.

Q. He says after he examined the patient he concentrated on the more probable ones?
 A. Yes. 40

Q. The renal colic diagnosis was correct because the lady passed a stone the next day?
 A. Yes, his diagnosis was correct.)

Q. You doctors what entrance to the General Hospital do you use ?
 A. The main gate opposite the clock tower.

Q. In coming out of that entrance to go to the Orient Club what would be the route you take ? A. Either go down Kynsey Road and turn at McCarthy Road or at Ward Place.

Q. Can you also turn at Gregory's Road ? A. Yes.

Q. The shortest way is by Ward Place and Alexandra Place past the Museum.

Q. Can you equally go down Horton Place and turn ? A. Yes.

10 Q. Or along Gregory's Road ? A. Yes.

Q. You know the road to the Orient Club coming out of Kynsey Road ? A. Yes, *via* Ward Place.

Q. Can you go to the Orient Club *via* Gregory's Road as well ? A. Yes. The second route is not much longer than the first it is almost the same.

Q. You told the court that on occasions when you called in the mornings Mr. Alles was at home ? A. Yes.

Q. That is when he was in Colombo ? A. Yes.

Q. Was he then in the Attorney-General's Department ? A. No,
 20 at the Bar.

(To Court :

Q. Do you know when he ceased to be a Crown Counsel ? A. I think after he returned from Jaffna.)

Q. To your knowledge had Mr. Alles a large practice ?

(I disallow the question.)

Q. From conversations you had with him did he claim to be busy ?
 A. No. At that time he had no car and he had told me once or twice that it would be a waste of time for him to go to the courts as he had nothing to do.

30 Q. Your leave on account of illness commenced in October, 1941 ?
 A. Yes on 22-10-41.

Q. Did that coincide with your transfer to Madulsima ? A. With my transfer to Dambulla. I was ordered to Madulsima on 30-9 and I had to assume duties there on 1-11. One month's time was given.

Q. Then when were these orders changed ? A. About two weeks or 10 days later. I protested against that and I was ordered to go to Dambulla.

Q. Which is the larger station ? A. Madulsima was the larger station.

40 (To Court :

Q. You fell from the frying pan into the fire ? A. Yes, but at the time I went, Dambulla was very important owing to certain reasons connected with the war.

No. 31
 Added-
 Defendant's
 Evidence
 Dr. Samahin
 Re-
 examination
 —continued.

Q. In this matter of your transfer did you correspond with the D. M. & S. S. ? A. Yes. I protested and a number of letters passed.

Q. Did you have anybody's assistance or advice ? A. Several of those letters had been drafted by Mr. Alles.

Q. Then you went on leave ? A. I went to Dambulla.

Q. While you were on leave the correspondence was going on ? A. Yes, it took about three months because the Director was away on a holiday in India for three months and he could not deal with it and there was somebody acting.

Q. I think you told the court that you went before three medical boards ? A. Yes.

Q. What was the composition of those boards ? A. My first certificate submitted was sent by Dr. Chas. Fernando, Medical Officer of Government Services, and subsequent to that the board was appointed. Then I sent a certificate from Dr. H. O. Gunawardena and as a result of that I had to go before a medical board and the first board was presided by Dr. D. B. de Alwis, and consisted of Dr. Sinnatamby and Vijarama. The next one was presided by Dr. Alwis and consisted of Dr. J. H. F. Jayasuriya and V. P. de Soysa. The third board had the same president and two junior people were sent in a medical registrar and a surgical registrar.

Q. What was the necessity for three boards ? A. Because at the end of one board another board must say whether the officer is fit or not.

Q. Was your leave granted in consequence of each one of these boards ? A. Yes.

(To Court :

Q. Was one of the treatments prescribed to you by these boards rest ? A. The board does not recommend any treatment.

Q. Did your private practitioner recommend rest ? A. Yes, a certain amount of it.

Q. Do you consider dancing and late hours rest ? A. Only on two occasions I went to big dances.

Q. Is it good for a person who is suffering from heart to go to big dances ? A. I was not very bad. I had an enlarged heart with murmurs and palpitation and things like that.

Q. What would have happened if that condition got worse ? A. I would have died.

Q. Is not the treatment for that perfect rest ? A. Up to a certain degree.

Q. Would not dancing be bad ? A. A moderate amount, no.)

Q. About December what was your condition ? A. I was better,

(To Court :

Q. Can you give the date of the first board ? A. At the end of November or early December. The second was in January, 1942, and that board said I was better but not quite recovered. The third was in February and that board said I was fit to work.)

No. 31
Added-
Defendant's
Evidence
Dr. Samahin
Re-
examination
—continued.

Q. Did a large number of medical officers attend that dance ? A. Yes.

Q. You had submitted a medical report from H. O. Gunawardena the heart specialist in consequence of which the board was appointed ?
10 A. Yes.

Q. Was he at the dance ? A. Yes.

Q. And he saw you I take it ? A. Yes.

Q. You remember you were examined yesterday as regards the suggestion which has been made that you went about with Mrs. Alles to enable Mr. Alles to take out Mrs. Namasivayam ? A. Yes.

Q. To begin with you were asked whether you were making any suggestion of misconduct and you said, no ? A. Yes.

Q. I repeat the question what is the suggestion you make as regards Mr. Alles and Mrs. Namasivayam ? A. From the time I met them at
20 these parties and so on I noticed that Mr. Alles was paying more attention to Mrs. Namasivayam than to any other member of the party and later on in April when we went up to the dance at Nuwara Eliya Mr. Alles was able to go that is he was on holiday and he could have returned in time to go up to Jaffna but he preferred to stay back in Colombo and after Mrs. Alles fell out with the Namasivayams I know that Mrs. Alles used to go to Namasivayams he once mentioned to me that he had gone there. I had also seen them at the Police dance and at the Silver Wings Carnival and that led me to draw certain inference.

Q. What are the inferences that you drew ? A. That he was in
30 love with Mrs. Namasivayam.

Q. Was that the subject of express instructions to your proctor before the trial commenced ? A. Yes.

Q. And was that matter discussed at conferences with counsel ? A. Yes, before the trial commenced.

(To Court :

Q. What do you mean by " being in love " with Mrs. Namasivayam ?
A. He liked to be in her company.

Q. Do you make any further suggestion, any suggestion of misconduct ? A. No.)

40 Q. That is you have not seen anything which would justify your making a serious charge of that kind ? A. Yes.

Q. You were shown 1D16..... ?

No. 31
 Added-
 Defendant's
 Evidence
 Dr. Samahin
 Re-
 examination
 —continued.

(At this stage Mr. Amerasekere hands to Mr. Obeyesekere an envelope in which P2 is alleged to have been sent marked " D5 "). The label on this envelope indicates that it arrived by express post? A. Yes.

Q. You told the court that you assumed duties at Dambulla on 28-2-42? A. Yes.

Q. And you were there and when did you leave it next to come to Colombo? A. 3rd or 4th April. I was here for the raid. I came on Friday. I went back on Sunday afternoon.

(To Court :

Q. Did you know then that action had been filed? A. No.) 10

Q. Did you meet Mrs. Alles during those days? A. No. I swear to that.

Q. You were on leave when did your leave expire? A. On Sunday I had to be on duty on Monday morning.

Q. How did you come? A. By car.

Q. Have you an assistant at Dambulla? A. There are two apothecaries while I am away an apothecary acted and for any emergency the D. M. O. Matale would come. I was stationed at Dambulla till 26-9-42.

Q. Is that the date you went on transfer to Galle? A. Yes.

Q. You say you were at Galle on 29th? A. Yes, I took charge 20 from the previous medical officer.

(To Court :

Q. There are no Sundae Tea Rooms at Galle? A. No.)

Q. To Kotalawala's party with whom did you go? A. I went with the plaintiff, that was in June, 1941.

Q. Where were you stationed then? A. Anæsthetist General Hospital.

Q. With whom did you go? A. With plaintiff, her sister and my eldest daughter. My eldest daughter is now 18 and she must have been 17 then. 30

Q. Do you know whether this is a standing function of the Colonel's? A. He is the Vice-President of some French Society and throws a party to the members and some of his personal friends. I do not know whether it was an annual event.

Q. At what time was the party? A. We went there at about 7 or 7-30. And returned at 10-30 or 11. It was not a late party. He had all the broadcasting people giving items, a sort of *al fresco* concern.

(To Court :

Q. Was it June? A. I cannot be definite about the month.)

Q. This incident at the Orient Club when you are supposed to have 40 taken a lady upstairs is there any particular rule of the Club as regards

members entertaining ladies at the Club? *A.* Yes, there is a ladies' day and if a member invites a lady on any other day it is an infringement of the Club rules.

Q. You were merely asked to explain? *A.* Yes.

Q. Was anything improper suggested? *A.* No.

Q. You gave an explanation as to how the lady came there and the matter dropped? *A.* Yes.

Q. How many were in your party? *A.* A lady, her husband and about three other men and myself.

10 *Q.* Are you a member of the 20th Century Club? *A.* No, I have never been there.

Q. It was suggested that you did not pay your card debts, is that true? *A.* No. I play cards regularly at the Orient Club and I still play cards there. The members of the committee of the Club play cards with me regularly.

Q. Your stay now in Colombo, do you stay at the Club? *A.* Yes. I have been a member of that Club for 6 or 7 years.

Q. Mr. R. L. Pereira I understand plays cards with you? *A.* Yes.

Q. You said you have certain liabilities? *A.* Yes.

20 *Q.* Are you able to pay them? *A.* Yes.

Q. Is your wife possessed of property? *A.* No, her father has.

Q. And there is the expectation? *A.* Yes.

Sgd. R. F. DIAS,
D. J.

Mr. Misso wants to call a witness from the office of the D. M. & S. S.

Mr. Wickremanayake objects—submits no special circumstances here.

I ask Mr. Misso whether this witness was on the list of witnesses filed before this action began. He replies in the negative.

30 Mr. Misso admits that this witness' name appears in a list filed after the trial began. He says that in the original list of the 1st defendant Dr. Willenberg was summoned to produce various documents.

Mr. Wickremanayake is heard. Objects. Says pinch of the case discovered. Court is bound by its ruling yesterday.

Mr. Misso replies. Submits he wants to prove that the certified copy 2D4 is not complete.

I have already dealt with the point in my order yesterday. I could see no special circumstances for exercising any discretion in regard to this application. It is refused.

Mr. Misso puts in 2D1 to 2D8 and closes 2nd defendant's case.

Sgd. R. F. DIAS,
D. J.

No. 32. Plaintiff's further Evidence.

Mr. Amerasekere says he has evidence in rebuttal.

Mr. Amerasekere moves for a summons on a Dr. Theobald and Mrs. C. O. Perera. Allowed, subject to any objections which may be taken at the proper time. I inform the parties that the trial will not be adjourned.

Mr. Amerasekere wants to know whether Mr. Wickremanayake is going to object to Dr. Theobald. Mr. Wickremanayake says he will object at the proper time if necessary.

Mr. Amerasekere says he has another application to make and asks that the 1st defendant be directed to leave the court while it is made. 10

Mr. Wickremanayake objects, he says a party is entitled to be in Court. I think the 1st defendant had better leave. 1st defendant does so.

Mr. Amerasekere says he wants to re-cross-examine 1st defendant on a certain point.

His third application is for a summons on the Chartered Bank to produce certain cash cheques issued by Mrs. Lavinia Alles, and particularly a cheque dated 17-12-42 and cashed on 19-12-42 through the Bank of Ceylon and all correspondence with regard to that cheque.

Mr. Amerasekere tenders motion. Mr. Amerasekere admits that no notice has been given to the other side. 20

His next application is for a summons on Mrs. Lavinia Alles to produce the counterfoils of cheques on the Chartered Bank issued in December 1942 and correspondence with regard to those cheques and books of account for December, 1942 and January, 1943.

Mr. Misso has nothing to say.

Mr. Wickremanayake has no objection to summons going on any witnesses subject to his right to object at the proper time.

He argues that the 1st defendant should be recalled after the plaintiff's evidence in rebuttal is closed.

ORDER

80

First with regard to the recalling of the 1st defendant this is governed by the Evidence Ordinance, section 138 and section 165 of the Civil Procedure Code. As I understand the situation section 138 deals with the right of a party to ask the court to permit a witness to be recalled, while section 165 deals with the right of the court in its discretion without reference to the parties to call a witness. The two provisions are separate and distinct. I agree with Mr. Wickremanayake that section 138 of the Evidence Ordinance although placed in that Ordinance is really a rule of procedure. There are several other sections which deal with procedure in the Evidence

Ordinance. I see no objection to the application of Mr. Ameresekere to recall the 1st defendant for further cross-examination and I think the application should be allowed.

No. 32
Plaintiff's
Further
Evidence
—continued.

With regard to the summoning of the Bank clerk and the lady who is alleged to have issued the cheque I think that application should also be allowed subject to the right of Mr. Wickremanayake to object at the proper time, but in exercise of my discretion under section 165 I think at the same time Dr. Babapulle should be ordered to be in attendance in case it becomes necessary to put some questions to him—whether he will be called or not I do not know.

Sgd. R. F. DIAS,

No. 33. Defendant's further Evidence.

STANLEY ALLES, sworn—Recalled.

Further cross-examined by Mr. Gratiaen.

No. 33
Defendant's
Further
Evidence
Stanley Alles
Further
Cross-
examination

Q. You told us in your evidence that your brother Dr. Alles had given you Rs. 8,000 to enable you to pay your debts? A. About that.

Q. That of course was long before you gave evidence in this trial? A. Yes.

Q. Did the payments up to Rs. 8,000 exhaust your debts? A. No. There were some outstandings.

Q. Your mother has not given you any money for some considerable time? A. Yes.

Q. Is that correct still? A. Yes.

Q. I mean up to date your mother has not given you any money. You gave evidence on the 15th December and you said that your mother had not given you any money whatever for a considerable time? A. Yes.

Q. That is up to 15th December, 1942, that still holds good? A. Unless of course you are referring to the fact that I paid Rs. 77·50 on account of my mother and my mother gave me a cheque on the Chartered Bank to pay that up.

Q. That was an accommodation? A. Pure.

Q. Except for that your mother made no payment to you? A. No.

Q. She has not even contributed towards the expenses of this litigation? A. My brother is doing that.

Q. When you say your mother has not given you any money up to date apart from Rs. 77·50 not only has she not given you any money direct but also not made money available for the payment of any of your debts? A. Those things are all in the charge of my brother.

Q. Apart from the Rs. 8,000 has any further money been made available? A. No, so far as I know. My brother looks after my mother's estates.

No. 33
 Defendant's
 Further
 Evidence
 Stanley Alles
 Further
 Cross-
 examination
 —continued.

Q. At the time you gave evidence on 15-12-42 can you recall whether you were being pressed by any creditors? A. Not so far as I can remember.

Q. It is only a month ago. You have not been pressed by creditors for a month after your brother came to your rescue, so you can say with some accuracy and certainty whether or not you have been pressed? A. That is correct I have not been pressed.

Q. You were free of all your serious debts before you took up your present appointment? A. No I admitted in cross-examination that I still have some outstandings. 10

Q. Small debts, no serious debts, they were paid before you joined the Government Department? A. Yes.

Q. Well then were you being pressed about the 15th December or in the course of last month, were you pressed by any creditor? A. No.

Q. You are quite sure of that? A. Yes.

(To Court :

Q. What are your debts today? A. About Rs. 1,500 outstanding.)

To Counsel :

Q. When you gave evidence last you said about Rs. 2,000. I am 20 wondering whether the Rs. 2,000 and the Rs. 1,500 indicates that something like Rs. 500 has been paid? A. No, I said it was between Rs. 1,500 and Rs. 2,000.

Q. What you mean to say is that your indebtedness today is the same as it was when you gave evidence last month? A. Yes.

Q. I take it your brother would consult you before making any payment on your behalf? A. Yes he would inform me.

Q. He would verify whether that sum is due and it is only then that he would make the payment? A. Yes.

Q. I take it that your creditors corresponded with you and it was 30 merely a domestic arrangement that.....? A. There was no question of correspondence, I gave my brother a list of those to whom I owed money and he kept in touch with some and he made payments.

(To Court :

Q. You mean he did not use you as a conduit pipe he dealt direct? A. Yes.)

Q. Can you tell me why these small outstandings were not paid? A. I am paying them gradually myself.

(To Court :

Q. Why did your brother stop at Rs. 2,000? A. Because these 40 are matters which I could adjust with my creditors and I am doing it myself.

Q. The pressing creditors were all paid up leaving these to you to pay? A. Yes.)

Q. You say you saw these other creditors and told them that your family had come to your rescue and that there were only these comparatively small amounts still due which you could pay out of your salary?

A. Yes gradually.

Q. Your idea was to pay them by monthly instalments? A. Yes.

Q. And that was accepted? A. Yes.

Q. You know the Babapulle family to which the witness whom you called belongs, did you ever owe any member of that family money? A. Yes.

Q. Which Babapulle? A. Dr. C. D. P. Babapulle known as Cyril Babapulle.

Q. How much? A. Rs. 750.

Q. Was he one of the people who was paid or one of the people who agreed to let you pay him gradually out of your salary? A. He was paid up by my brother.

Q. That Rs. 750 is not included in the Rs. 1,500 or Rs. 2,000? A. No.

Q. That must have been paid before you gave evidence last month? A. Yes.

Q. How long ago? A. Somewhere about the middle of the year. That is the middle of 1942.

Q. I mean the amount due to him was not included in the Rs. 1,500 or Rs. 2,000 you have been paying off gradually since you joined the department? A. Yes.

(To Court :

Q. So that on the 15th December you owed nothing to Cyril Babapulle? A. No.)

Q. Did you owe any other member of the Babapulle family? A. No.

Q. Your mother of course is in no need whatever to borrow for her requirements? A. Not so far as I know.

Q. The witness Babapulle gave evidence on the 18th December three days after you gave evidence? A. Yes.

Q. Besides yourself none of the other members of the family have been in financial difficulties? A. No.

(To Court :

Q. Are you related to the Babapulles? A. No.)

Q. It would be correct to say no Alles owes money to any Babapulle —no Alles in your household? A. No, so far as I know.

No. 33
Defendant's
Further
Evidence
Stanley Alles
Further
Cross-
examination
—continued.

Q. I suppose if Dr. Babapulle gave evidence on the 18th he must have attended a consultation the day before he gave evidence and you must have been there? A. No, I do not remember his having attended a consultation.

Q. He merely gave a written statement? A. No.

I met him and I was aware of what he knew and I told my lawyers.

Q. How long before he gave evidence did you last meet him. You were quite friendly? A. No, I did not know him so well as Cyril. I knew Cyril longer. I did not see him a day or two before Babapulle gave evidence. I had not seen him during the whole of last year except perhaps 10 seeing him on the road.

Q. Have you any knowledge as to the circumstances in which a cash cheque for Rs. 500 drawn by your mother went into the account of Mrs. Babapulle on the 19th December? A. I am not aware.

Q. This comes as a surprise to you? A. Yes.

Q. Can you suggest any reason to Court? A. I do not know. I do not know what dealings my mother had with a Mrs. Babapulle.

Re-examined.

No. 33
Defendant's
Further
Evidence
Stanley Alles
Further Re-
examination

Mr. Wickremanayake wants to know which Mrs. Babapulle has cashed the 1st defendant's mother's cheque. 20

Mr. Ameresekere says that he believes it is Mrs. Cyril Babapulle but that he has not seen the cheque and he is without instructions.)

Q. Your mother plays cards frequently? A. Yes.

Q. She plays poker? A. Yes.

Q. Is there any Babapulle who attends these games? A. I do not know.

Q. You have not taken part in them? A. No.

Q. The suggestion now is that this money is a consideration paid by your mother through Mrs. Babapulle to Dr. Babapulle to procure his evidence? A. That is false. 30

Q. How is he financially situated? A. He is very comfortably off. He is a very rich man.

Q. Dr. Cyril Babapulle is in private practice and his father was a doctor before him and they all came to money when the father died? A. Yes.

(To Court :

Q. Is it true that Babapulle has given false evidence in this case for a monetary consideration? A. Certainly not, it is utterly false.)

Q. Is Dr. Babapulle as well off as any one of us here? A. Probably more. 40

Sgd. R. F. DIAS,
D. J.

Plaintiff's Further Evidence.

MERLE ALLES—Sworn.

Q. When were you married? A. On 21-6-33.

Q. How long before that had you known the 1st defendant? A.
Since 1925 or so.

Q. That is prior to your mother's death? A. Yes.

Q. When did she die? A. On 18-7-26.

Q. I suppose you fell in love? A. Yes we did.

10 Q. You used to meet frequently after that? A. Yes.

Q. After your mother's death did you stay with the Alles'? A.
Soon after my mother's death I stayed for two months with Dr. and Mrs.
Alles at Galle. That is my father-in-law and mother-in-law.

Q. How is Mrs. Alles related to you? A. She and my father's
mother are two sisters.

Q. When did 1st defendant go to England? A. On the 7th
September, 1927. He returned I think in September, 1931.

Q. Did you correspond with each other when he was in England?
A. Yes for the first two years when he was there.

20 Q. Did you meet him on his return to Ceylon? A. Yes, his
father and mother and himself came and had tea with us.

Q. Where were you living then? A. At Rockmore, Gregory's
Road.

Q. Then you were staying with your parents? A. My father.

Q. After that when did you meet him? A. We met at the Galle
races. That was in December, 1931.

Q. Prior to that did he visit you? A. Yes. He came once or
twice.

Q. Your mother-in-law Mrs. Alles was she in favour of your marriage?
30 A. Never in favour of it.

Q. She objected? A. Yes.

Q. Old Alles? A. He was very nice.

Q. Since then has your mother-in-law been on calling terms with
you? A. Never.

Q. Was her husband different? A. Yes.

After marriage I stayed for a short time with my father at Rockmore
and after that we moved to Shady Grove Avenue.

Q. After the marriage did 1st defendant get any allowance from his
parents? A. I do not think he got anything from his mother.

40 Q. Did he get anything from his father? A. Occasionally.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
examination
—continued.

- Q. Nothing from his mother? A. No.
- Q. Was he earning very much in the profession? A. No, he had just started.
- Q. After you married you had no children? A. No.
- Q. Were you both anxious to have a child? A. Yes, very.
- Q. With a view to getting children did you see any doctor? A. I saw Dr. C. I. de Silva who was a good friend of my father.
- Q. He is no gynæcologist? A. No, and he suggested that I should see Dr. Wickremasooriya.
- Q. Did he treat you? A. When I went there he said I must stand an operation.
- Q. At that consultation did he question you about your menstrual history? A. Yes he did.
- (Mr. Wickremanayake objects—Leading question).
- Q. When were you born? A. On 13-11-1912.
- Q. When did you grow up? A. When I was about 11 years.
- Q. How was your menstrual flow at this time, immediately after you grew up? A. It came in clots.
- Q. Did you consult anybody? A. Yes, my mother took me to see lady Dr. Mrs. de Baur. 20
- Q. And she treated you? A. Yes.
- Q. How long did the flow last? A. From 9 to 10 days.
- Q. Did you have your regular periods at that time? A. Always been very irregular.

(At this stage Mrs. Alles' cheque counterfoils are produced in Court. The Chartered Bank cheque counterfoils contain no cheque issued on the 17th December. The Hongkong Bank cheque counterfoils produced show no cheque issued on 17th December. The counterfoils are handed to Mr. M. T. de S. Amersekere who goes through them).

Sgd. R. F. DIAS. 80

I ask the plaintiff to stand down for a moment.

MERLE ALLES, Sworn—Recalled.

Further examined in chief.

- Q. You said your periods were irregular? A. Yes.
- Q. Irregular how, in how many days do you get them? A. It varies. Sometimes 21 days.
- Q. Between the end of one menstrual period and the beginning of the next? A. Sometimes 21 days, sometimes 24, sometimes 28, 30, 40 to 45 days.

Q. Then you said you were advised an operation by Dr. Wickremesooriya? A. Yes.

Q. Where was that operation performed? A. At Dr. C. I. de Silva's Bungalow.

Q. By Dr. Wickremasooriya? A. Yes.

Q. After that did you get children? A. For about a year I had no child.

Q. Did your periods change as a result of that operation? A. There was a change in the number of days from 9 to 10 to 8 and 9. That is in the duration of the flow.

Q. And the intervals were? A. The same.

For one year after that I had no children and I went again to see Dr. Wickremasooriya.

Q. And was there a second operation? A. Yes, at the Lady Havelock Hospital.

Q. In what year? A. About February, 1937.

Q. After that did you conceive? A. In September.

(To Court :

Q. What happened to your periods after that second operation?
20 A. They did not change.

I conceived in September, 1937 and Hortense was born on 30-6-38 at the Private General Hospital.

At the time that you were expecting Hortense had you a hæmorrhage.

Q. And had you an easy delivery? A. Very easy delivery.

Q. Who paid the bill?

(I disallow this. I do not think it is relevant).

Q. After the child was born was there any difference in the regularity of your periods? A. It came down to less days. It was six days and
30 the interval the same.

Q. Still irregular? A. Yes.

Q. Last November, 1942 had you any period? A. Yes, I had it twice.

Q. In December? A. The same. Two.

(To Court :

Q. That is four in all in two months? A. Yes.

Q. How do you know they are periods? A. Because I bled for six or 7 days.)

Q. In consequence of your having two periods in November and
40 December did you consult any doctor? A. Yes.

Q. When did you first meet Dr. Samahin? A. At the bungalow of R. F. Alles.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
examination
—continued.

Q. When? A. Soon after they married about 1937.

Q. Where were they living at the time? A. Sea View Avenue, Colpetty.

Q. Were you with your husband at the time? A. Yes.

Q. Where else did you meet him? A. At Mrs. R. F. Alles' Laurentum.

Q. How often did you meet him there? A. Quite often because we played cards there.

Q. You remember the time the 1st defendant was operated at the Private General Hospital for appendicitis? A. Yes. 10

Q. Did you meet Dr. Samahin that day? A. No, I did not.

Q. Is it correct to say that you were introduced to him at the Private General Hospital? A. No.

Q. How many doctors were present when the 1st defendant was operated? A. About 8 or 9 doctors.

(To Court :

Q. Who performed the operation? A. Dr. Gabriel.

Q. Who was your family physician at that date? A. Dr. Ernest Soysa.

Q. Was he also present? A. Yes. 20

We could not get him that day, my husband had a terrible pain and we got in Dr. Cyril Fernando and he recommended Dr. Gabriel.

Q. In 1940 you used to go often for promenade music to the Galle Face Hotel? A. Yes.

Q. That was on Sundays? A. Every Sunday evening practically.

After the music we used to go for dinner and to the G. O. H. to dance.

Q. Did you and your husband go alone or in a party? A. Always in a party.

Q. Who composed that party? A. Mr. and Mrs. Namasivayam and my sister and my husband and myself. 30

(To Court :

Q. What is this deformity that Namasivayam is supposed to be suffering from? A. I have never seen his hand. He has told me that he had a deformity from his elbow downwards.

Q. Has he dined at your house? A. Yes.

Q. Have you not seen his hand then? A. He never used it. He used his left hand.

Q. Did he dance? A. Yes.

Q. Has he danced with you? A. Yes.

Q. He has got to get you round the waist with his right hand? 40
A. Yes, but I face him at the time. His hand is always in his trouser pocket.

Q. You have not even momentarily seen his hand in the act of getting it round your waist? A. No.

Q. Was he ashamed of his hand? A. He never showed it, he must have been).

Q. You say he has been dining at your place? A. Yes.

Q. Have you assisted him? A. Not I, somebody who sits next to him helps him.

Q. If he is eating a beef steak how does he cut it? A. I have not noticed it.

10 Q. Has somebody got to cut it? A. I did not notice it.

Q. Whom did you meet at the Galle Face Hotel? A. Dr. Samahin.

Q. Did you meet the Ludowykes? A. Yes, very often.

I attended the Holy Family Convent.

Q. Did you meet Miss Ludowyke there? A. No, my sister because she attended St. Bridget's Convent.

Q. Did Dr. Samahin and his friends and the Ludowykes also come regularly? A. Yes.

Q. And did you get very friendly? A. Yes.

20 Q. He used to come and join and you got quite friendly were you introduced to the Ludowykes? A. I first met them at the Police dance and after that in the Galle Face Hotel.

Q. Police Dance which year? A. I think in 1939.

Q. Was your husband introduced to the Ludowykes? A. When I was introduced my sister and I were there and my husband was not in the company.

Q. When was he introduced? A. He met them for the first time at the Galle Face Hotel.

Q. And did you become very friendly with the Ludowykes? A. 80 Yes, very.

Q. They began to call on you? A. Yes, twice or three times a week.

Q. Would you describe them as your acquaintances? A. They were very good friends and not acquaintances.

Q. You said Dr. Samahin was very friendly when did he first visit you at your bungalow? A. About the end of 1940.

It was a friendly call.

Q. And after that did he turn up frequently? A. Yes, he used to come and there was a standing invitation by my husband to him for 40 lunch every Sunday.

Q. Did he extend it to Mrs. Samahin? A. She never came she did not go about.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
examination
—continued.

Q. Did you visit her? A. Yes, we called on her. When we called she was not well and we met her.

Q. She never returned the call? A. No.

Q. When was that? A. In 1940 between Christmas and New Year.

Q. And Dr. Samahin you are aware has several children? A. Yes.

Q. Did the children come? A. He has brought his children to see us.

Q. Does Mrs. Samahin visit friends? A. I do not know. 10

Q. Have you met her outside? A. Never.

Q. The children used to be brought for parties to your place also at the Ludowykes? A. Yes. I have met them there.

Q. After he became very friendly you used to go out with him? A. Yes, my husband and I and my sister. He used to ask us and we went.

Q. Did he stay for lunch on other days than Sundays? A. If he was invited not otherwise.

Q. What were 1st defendant's relations with his mother? A. He had nothing to do with his mother except that we used to call on her 20 every Christmas and New Year.

Q. His brother Dr. R. F. Alles? A. It was the same.

Q. Did he make any applications to his brother for money?

(Mr. Wickremanayake objects)

Q. Money for the payment of his debts? A. Yes, he has applied he told me. He had asked his brother for money and he refused and so he was very hot about it.

Q. You know Mr. J. M. Alles how was he related to the 1st defendant? A. J. M. Alles and Dr. R. F. Alles are two brothers.

Q. He is now dead? A. Yes. 30

He died on the 14th July, 1940.

Q. Did he help the 1st defendant? A. Yes.

Q. How do you know that? A. My husband always told me when he got any help from anybody.

Q. J. M. Alles died leaving a will under which your husband is the beneficiary? A. Yes.

Q. Dr. Alles is the executor under the will? A. Yes.

Q. After the death of J. M. Alles did your husband make an application to Dr. Alles for money?

(I disallow that question—leading question). 40

Q. After the death of J. M. Alles the financial state of your husband was as it was before it did not improve? A. No.

- No. 34
Plaintiff's
Further
Evidence
Merle Alles
examination
—continued.
- Q. Did he in any way try to get money from his brother? *A.* Yes.
- Q. How do you know that? *A.* He told me so.
- Q. Did the brother comply with his request? *A.* No. He did not even show my husband the last will of J. M. Alles.
- Q. Did he apply for a copy of the will?
(I disallow this line of cross-examination. This is all hearsay).
- Q. Did your husband obtain a copy of the will to your knowledge?
A. Yes from his lawyers.
- 10 Q. Who are his lawyers? *A.* Mr. Jayewardena.
- Q. Do you remember the dinner to Dr. A. M. de Silva? *A.* Yes, we were guests of Dr. Samahin. That was on the 2nd November, 1940.
- Q. Who were the we? *A.* My husband and I and my sister.
- Q. You also attended the medical dance of that year? *A.* Yes. 1st defendant my sister Mrs. Ludowyke and the two daughters.
- Q. Did you and your husband extend an invitation to the 2nd defendant to come for supper on New Year's night? *A.* Yes. We asked him to come for supper after the mid-night mass.
- (To Court :
- 20 Q. Why did you invite a muslim to a Christmas dinner? *A.* As a friend of the family.
- Q. Did he come for the supper? *A.* No he did not.
- Q. What did you do? *A.* My husband first phoned up to the Orient Club and spoke to Dr. Samahin and he said he would come in half an hour, there was no signs of his coming and my husband got into the car with my brother and went and saw him.
- Q. When he left how was he dressed? *A.* Sarong and banian.
- Q. Did the doctor come with him? *A.* No.
- Q. When did the doctor visit you after that? *A.* On the 25th
30 morning.
- Q. Did you entertain him? *A.* He first apologised for not being present for the supper and had a few drinks and we asked him for lunch, he said he had a previous engagement and would come later.
- Q. Did he come later? *A.* Yes in the evening at 4 or 5.
- Q. Did he stay for dinner? *A.* He came with the Ludowykes and he took us out for a drive and we had dinner.
- Q. The Ludowykes also dined? *A.* Yes.
- Q. You had no car at this time? *A.* We had a car but Dr. Samahin gave us a drive that evening.
- 40 Q. At this time about Christmas what was your husband's financial position? *A.* Bad.
- Q. Was it good at any time? *A.* Not to my knowledge.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
examination
—continued.

Q. Was he borrowing money? A. Yes.

Q. Did you yourself back any notes of his? A. Yes.

Q. About the end of January your husband went to Jaffna to prosecute at the Sessions? A. Yes.

Q. Before he went what did he do with his car? A. He gave it to the garage to be attended to. It was repaired and he could not afford to take it back and it was sold.

Q. So when he left for Jaffna the situation is you were left in Colombo without a car? A. Yes.

Q. Did you go to the station to see him off? A. Yes. 10

Q. How did he go? A. In Dr. Samahin's car.

Q. And who went to the station? A. Dr. Samahin my sister and I.

Q. You went down to the platform? A. Yes, up to the train.

Q. Tell us what happened? A. We waited till the train started off and my husband was wishing us good-bye and he told the doctor I am leaving my wife and sister-in-law in your charge look after them.

Q. How did he bid you good-bye? A. He kissed me good-bye.

Q. After he got to Jaffna did you write to him regularly? A. Yes, two or three times a week. 20

Q. Did he write to you regularly? A. Sometimes he did not.

(To Court :

Q. There was a continuous correspondence between you two? A. Yes, twice or thrice a week.)

Q. You have got the letters he wrote to you from Jaffna? A. I kept all his letters—every letter from the time I met him I have.

Q. Did your husband keep the letters you wrote? A. When he came back for good on 20th August he had all my letters. I do the packing and unpacking when he returns and I found all the letters in a shoe box. 30

(To Court :

Q. You mean he has got the letters and has not produced them? A. Obviously—I do not know).

Q. When were arrangements made for you to go to Bandarawela? A. There was a talk about going to Bandarawela when my sister returned from hospital in October. She was advised to go upcountry for a holiday.

Q. When were the arrangements actually complete to go and stay at Bandarawela? A. When my husband went to Jaffna he wrote to Solomons. He wrote from Jaffna.

Q. When was that? A. Sometime early in February. I know 40 it because I had a letter from Mrs. Solomons that he had written,

Q. Did you visit your husband in Jaffna before you went to Bandarawela? A. Yes on the 27th February.

Q. Did you inform your husband that you might be coming with the Ludowykes to Jaffna. Shown letter P8. "By all means let Mr. and Mrs. Lud. come with you." That is the Ludowykes? A. Yes.

Q. They did not ultimately go with you to Jaffna? A. No. (Shown letter of 25-2-41 P39) "So you cannot find someone to come up with you next week..... I was hoping that even Dots would come up"? A. That is Mrs. C. O. Perera.

10 Q. You went up to Jaffna then alone? A. Yes.

Q. Where did you stay? A. At Krishnaratne's.

Q. And your husband continued to stay in the rest house? A. Yes.

Q. Why did you not stay at the rest house? A. Because when I met him at the station he said that Mr. and Mrs. Krishnaratne had invited me and I could reside there and it was expensive to stay at the rest house.

Q. You would have liked to stay with him? A. Yes.

Q. Did you call on your husband at the rest house? A. Yes 20 daily.

Q. And did you dine there? A. I had lunch with him one day when he had asked Mr. and Mrs. Quintin Fernando and others.

(To Court :

Q. Did you have relations with him? A. No.

Q. Why? A. Because I was at the Krishnaratne's.

Q. He had a room hadn't he? A. Yes.)

(P10 read dated 8-3-41).

30 "I am glad Asoka shared your dinner that night" That is when I was travelling that night. He was travelling in the same train and I had a very big dinner and he shared it.

Q. "Mariampulle is very pleased at the compliment you paid about his dinner"? A. That is the rest house keeper.

Q. After the 1st defendant left for Jaffna did 2nd defendant visit you in Colombo? A. Yes.

Q. As usual? A. Yes, once or twice a week.

(To Court :

Q. He had been asked to look after you, how did he look after you? A. Whenever he came he wanted to know if we wanted anything or whether he could take us about.)

40 Q. At that time after the 1st defendant left for Jaffna who were left in your house? A. Myself my sister and my little daughter and servants.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
examination
—continued.

Q. Who were the servants? A. One boy. I do not know his name, the baby's ayah. An ayah to do the bed rooms. I do not know their names and Alice was the cook. And a garden cooly.

(To Court :

Q. Have these people given evidence in this case? A. Only one, Alice.)

My brother Noel was with us at that time. He is employed at the Income Tax Office.

Q. Was he then employed there? A. Yes, from the time he returned from England. 10

Q. At what time does he leave the house? A. At about quarter to 9.

Q. Does he come for his lunch? A. Yes at about 12-30 or quarter to 1.

Q. And leaves? A. About quarter to 2. He returns from office between 4 and 4-30.

Joslin came just a day or two before I went to Bandarawela.

Q. She did not know you before that? A. Yes, she knew when I was at Pamankadde.

Q. How long was she in your employment? A. About a year 20 and she was re-engaged before I went to Bandarawela.

(To Court :

Q. She does not know anything that happened in your house in the early part of February? A. No.)

Q. After you came back how long did she remain in Colombo? A. She left me about the middle of July.

Q. Why did she go away? A. Because her daughter was getting married.

Q. You heard her evidence you gave her some presents? A. Yes, she was a poor woman and she wanted her daughter's bridal clothes, 30 and I was glad to give them to her.

Q. Do you know Pabilis who gave evidence? A. Yes.

Q. When was he engaged? A. It was after I returned from Bandarawela. My husband was not at home when I engaged him.

When my husband returned on 9-8 he was in the house.

I employed the gardener after my husband left for Jaffna.

That is Velauthen. About the end of February.

Q. When did he leave you? A. He was there till December, 1941.

Q. You have an aunt Miss Neydorff? A. Yes, my mother's elder sister.

Luncheon Interval.

Sgd. R. F. DIAS,
D. J.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
examination
—continued.

21st January, 1943.

MRS. ALLES.

Q. Where does your aunt stay? A. She stays with Mrs. Alles at 37th Lane, Wellawatte.

10 Q. In 1940 and 1941 was she staying usually with your aunt Mrs. Walles? A. Yes.

Q. Did she come round and stay with you at Merlton? A. She came in February when my sister was in hospital. That was after my husband went to Jaffna.

Q. Can you be more particular? When did your sister go to hospital? A. That was after my husband left. About 10 days after my husband left.

(To Court :

20 Q. What was the trouble? A. It was some trouble—the after effects of an operation for appendicitis.

Q. How long was she in hospital? A. About one week.

Q. During that period Mrs. Neydorff was with you? A. Yes, and other friends.

Q. Who were the other friends? A. Mrs. Waldo Sansoni and her family.

Q. Who else? A. Her eldest daughter.

Q. How long did they stay? A. They were there till Mrs. Sansoni died which was about 13th or 15th February.

Q. You are very friendly with the Sansoni's? A. Yes.)

30 Q. When did she come to stay with you next? A. She came again just before I went to Bandarawela.

Q. How many days before? A. She came 3 or 4 days before.

Q. That was after you returned from Jaffna and before you went to Bandarawela she stayed with you how many days? A. 3 or 4 days.

Q. Did she come to Bandarawela to see you? A. No.

Q. You returned about 20th April? A. Yes.

Q. After that when did Miss Neydorff come? A. She came a day or two before my sister's birthday on the 28th.

Q. How long did she stay? A. 2 weeks at that time.

40 Q. In early May she left? A. Yes.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
examination
—continued.

Q. What was the next occasion she came to Merlton? A. She came before Hortense's birthday which was on 30th June—a day or two before.

Q. How long did she stay? A. She stayed a very short time about 3 or 4 days.

Q. What was the next occasion she came? A. She came in July when I was ill.

Q. How many days before Dr. Frank Gunasekera's visit? A. She came after Dr. Frank Gunasekera's visit about 13th or 14th July.

Q. Stayed how long? A. Till about the 20th. 10

Q. After that when did she next come? A. She came in August.

Q. About what time? A. She came after the 9th.

Q. How long after? A. Must have been about the 15th or so.

Q. Was she there at the time your husband returned? A. She was, when my husband returned from Jaffna.

Q. How long did she stay? A. Till the 26th August.

Q. Where did she go thereafter? A. She went with my sister to Kandana.

(To Court :

Q. During the time Miss Neydorff visited you, you had your full 20 staff of servants? A. Yes.

Q. They were well aware of her visits? A. Yes.)

Q. When did Merita return from India? A. She came for her holidays in 1939.

Q. What was she doing in India? A. She was learning there. She was in Kodaikanal.

Q. She was known as Kodi? A. My husband addressed her as Kodi.

Q. After she returned from India she lived with you? A. Yes, till she left on 26th August. 30

Q. When 1st defendant left for Jaffna she was living with you? A. Yes. When she came from India she was always with me.

Q. During this whole period up to 26th August she was with you? A. Yes.

Q. She was with you at Bandarawela? A. Yes.

Q. You heard the evidence given by the servants Alice, Pabilis and Joslin? A. Yes.

Q. You have been in Court every day of the trial? A. Yes.

Q. What have you to say to that evidence? A. What they said is all false. 40

Q. Did Dr. Samahin at any time either during this period or beside the period occupy any room in your house? A. He has never been to any of our bed rooms.

Q. Did he ever sleep in that house either during the day or during the night? A. Never.

(To Court :

Q. He never had an egg flip in the morning? A. Never.

Q. That is a lie? A. Yes.)

Q. Did you make egg flips? A. Yes, for my husband, every 10 morning.

Q. After he left? A. No. I do not like eggs. Merita swallows a raw egg in the morning. I did not make egg flips for Miss Neydorf.

Q. You heard Pabilis say that one day your father came to Merlton he knocked you up in the guest room and told you that your father had come? A. No such incident took place.

Q. Was there a sarong in the spare room? A. No.

Q. Was there any occasion to leave a sarong there? A. No necessity.

Q. You heard Alice say that after 1st defendant went to Jaffna you 20 did not regularly pay them? A. Yes.

Q. Is that a correct statement? A. It is not true.

Q. You paid wages regularly? A. Yes.

Q. You keep your house accounts very regularly? A. I always kept house accounts.

Q. You produce the book of accounts you have kept for what period? A. 1939. From the time I started keeping house.

Q. You have here the accounts up to December? A. Yes.

(It is marked P40.)

Q. You have here the accounts for 1941? A. Yes.

30 Q. This book of account shows that you have been paying the servants regularly? A. You will see the exact date I paid the servants.

Q. Will you show me February, 1941? (Witness shows it).

(I mark the page for February, 1941—P 40A).

(To Court :

Q. You only paid two people? A. The paid against the two entries in February means advances. I have also shown the date on which I paid. When I pay I mark down).

As soon as I pay the servants the salary I write down the entry.

40 Q. During this period that is when your husband was away in Jaffna did 2nd defendant continue to visit you? A. Yes, he did.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
examination
—continued.

Q. Did you go out with him during that period? A. I have gone out with him in the company of my sister.

Q. Did you go visiting friends? A. Yes.

Q. Am I to understand that you never went with him alone?
A. I went with him alone twice for the Police dance and the Silver Wings Carnival.

Q. Every other time you had your sister with you? A. Sister or friends.

Q. Did you go out for dances during this period? A. I went to the G. O. H. with my sister and friends. 10

Q. Who are the friends? A. With the Namasivayams and with the Ludowykes.

(To Court :

Q. Did the Sansonis go? A. They were mourning at the time.)

Q. Merita was always with you? A. Yes.

Q. During this period did you write to your husband and inform him of your movements in Colombo? A. Yes, and if I wanted to go anywhere I asked for permission.

Q. Did you almost record to him daily what you did? A. Yes.
P13 read to witness. P14 dated 4th June read to witness. 20

Q. You say whenever you wanted to go about you wrote to your husband and asked for permission? He was impatient with you for asking for such permission? A. Yes.

Q. You went up to Bandarawela with your sister and Hortense about 20th March? A. Yes.

Q. You also took the woman Joslin as the baby's ayah? A. Yes.

Q. Normally what did you do in Bandarawela? A. We used to go out for walks in the morning, go to the pictures in the evenings. I used to dine out very often with Mr. and Mrs. Monty Jayawickrema and go to the Club. 30

Q. You had a number of friends of yours whom you met at Bandarawela—who are they? A. Mr. and Mrs. Monty Jayawickrema, Major and Mrs. Stanley Fernando, Mr. and Mrs. Victor Dias. Mr. Stanley Fernando had come for a holiday.

Q. Mr. and Mrs. Dias had a bungalow there? A. Yes.

Q. Mr. and Mrs. Jayawickrema's had a house? A. Yes.
Major Stanley Fernando was in our boarding.

Q. During that time 1st defendant wrote to you regularly? A. Yes. 40

Q. Just before Easter you received P12 from your husband? A. Yes.

Q. After your husband came to Colombo did he write to you or telegraph to you in Bandarawela? A. No.

Q. The only intimation that you got that he would be coming during the Easter week-end was P12? A. Yes.

Q. When did you come to hear of the fact that he was in Colombo? A. Only that letter.

Q. That he had actually come down? A. When I met the 2nd defendant at the Club on Good Friday morning.

Q. Did you know the 2nd defendant was coming to Bandarawela on that day? A. No.

Q. You met the 2nd defendant at the Club on Good Friday morning? A. Yes.

Q. What did you do that morning? A. We went for morning service then went to breakfast with Mr. and Mrs. Victor Dias. I went back home and came to town. We went in the morning for the 7 o'clock service.

Q. You are a Catholic? A. Yes.

Q. Was there a Mass on Good Friday? A. Yes. It is called a pre-sacrifice mass. There is no Communion.

20 Q. After breakfast where did you go to? A. We went to the boarding.

Q. When did you go to the Club? A. 10-30 or 11.

Q. Then you met 2nd defendant? A. Yes.

Q. Quite accidental? A. Yes.

Q. After you got to the Club you met the 2nd defendant, what did you do? A. We went in Mr. Perumal's car to the bazaar.

Q. Why did you go to the bazaar? A. To buy vegetables. I was sending it down to a friend.

Q. To whom? A. Miss Ludowyke.

30 Q. Who accompanied you in the car? A. Mr. Perumal, my sister, the doctor and I.

Q. Who is Perumal? Did you know him before? A. Yes.

(I point out to Counsel that it is not necessary to get the evidence in such meticulous detail like this as nothing turns on the events of the Good Friday.)

Q. Did you meet your husband on that day? A. Yes, in the bazaar with a friend.

Q. Did you speak to him? A. It was a surprise to me as I did not know he was there.

40 I asked him how he came and when.

Q. You had a few minutes conversation? A. About half hour,

No. 34
Plaintiff's
Further
Evidence
Merle Alles
examination
—continued.

Q. Why did he not stay longer with you and have lunch? A. 2nd defendant invited him for lunch. He said he was not dressed to go for lunch to the hotel.

Q. Did you invite him to your boarding house? A. No.

Q. Why? A. Because he had refused the first invitation. I did not want a refusal.

(To Court :

Q. Surely your inviting him to lunch and 2nd defendant inviting him to lunch are not on the same plane? A. It was not for me to ask him, it was for him to ask me. 10

Q. But pardon me you were the lady in possession and you were there the permanent resident but he was the visitor? A. I could not ask him to the boarding because I was also a paying guest. It was not the correct thing so I did not ask him.

Q. Why did you wait till the 2nd defendant asked him for lunch? A. I had so many things to ask about. It did not strike me to ask him for lunch.)

Q. Did he bring anything? A. He brought some jewellery to the child, and some powder and elastic. I had written to him to bring them if he was coming through Colombo. 20

Q. He brought those? A. Yes.

Q. 1st defendant left with his friend? A. I asked his permission to go to the races and that if I could get a lift I would come for his birthday.

Q. Races where? A. Nuwara Eliya.

Q. On what day? A. The next day.

Q. With whom? A. Colonel Stanley Fernando.

Q. Permission granted? A. He said by all means go.

Q. Where did he go after this conversation? A. He said he was going to lunch at Welimada.

Q. From Welimada did he say where he was going to? A. He 30 said he was going to Nuwara Eliya before he got to Colombo. I did not know how he was going to Colombo.

Q. Where did you have lunch? A. With Mrs. Solomons. Mr. Perumal took me to the station first and then I went in the same car to the Solomons.

Q. Who lunched with you? A. 2nd defendant.

Q. Who invited him? A. Mrs. Solomons invited him for lunch. 2nd defendant came there and as he was going away Mrs. Solomons invited him for lunch.

(To Court :

Q. Why did you not allow your husband the same chance? A. 40 My husband was not prepared to come.

Q. Why did you not ask your husband? A. Because I did not want a refusal.

Q. After lunch Mrs. Alles what did you do in the afternoon? A. We went to Mr. and Mrs. Muttetagama. The doctor, sister and I went there.

Q. What did you do there? A. The men were playing cards and I and the other ladies were amusing ourselves in other ways.

Q. From there where did you go? A. We came from there left the doctor to get dressed and went to Diyatalawa.

10 Q. Where did you go to? A. To Major Fonseka's.

Q. How did you go there? A. He sent his car.

Q. When had he invited you? A. Sometime before.

Q. What sort of a car was it? A. It was a big car.

Q. Saloon? A. Yes.

Q. Closed car? A. Yes. I think it was a five seater.

Q. Who went with you? A. Doctor, my sister and I.

Q. How did this Major come to invite the 2nd defendant? A. He met him at the Club. He said the girls were coming and invited him.

20 Q. Why did the Major's invitation extend to the doctor? A. He knew the doctor and were friends before and he said the girls are coming this evening and invited him also.

Q. Were you the only three friends of the Major in the Club? A. We were the only people who were talking together.

Q. Were there other people in the Club? A. Lots.

Q. What time did you return? A. About 10-30 or 11.

Q. Came back in Major Fonseka's car? A. Yes.

Q. You got down? A. Yes. The car went right up to the boarding. We got down and went.

30 Q. The following day please tell the Court briefly what your movements were? A. Colonel Fernando and I went and picked up the doctor and went to the Nuwara Eliya races. We picked the doctor from his boarding house and went to Nuwara Eliya.

Q. What time did you return? A. About 4-30 or 5 p.m.

Q. What did you do in town? A. I was dropped at the Club.

Q. You mean the doctor and you? A. Yes.

Q. Whom did you meet at the Club? A. My sister Merita.

Q. What did she say? A. Merita said something.

40 Q. What did you do? A. We went and fetched a suitcase from Mrs. Dias' which I had left there in the morning on the way to Nuwara Eliya. I took it and brought it in Mr. Perumal's car. My sister and I were dropped at Jayawickrema's along with the doctor. The two gentlemen left us saying that they would come and pick us up for the dance, Mr. Perumal was the other gentleman.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
examination
—continued.

- Q. Did they call for you? A. Yes.
- Q. About what time? A. Between 9-30 and 9-45.
- Q. Where was the dance? A. At the Bandarawela Hotel.
- Q. What time did you return? A. About 12 o'clock.
- Q. Why was it a wash-out? A. It was an entirely European show.
- Q. So you came away? A. Yes.
- Q. Why did it matter if it was all Europeans? A. It was rather awkward.
- Q. Where did you get back? A. We dropped the doctor at the 10 boarding. We were dropped at the Jayawickrema's and Mr. Perumal went off.
- Q. Why did you not go to Solomons'? A. Because it was too far. It was 2½ miles from the town and it was too far to ask anybody to drop us there.
- Q. That night you all were brought back in Perumal's car? A. Yes.
- Q. The following day—Easter day—please tell what happened?
A. We went for late Mass on Easter Sunday.
- Q. Who are the we? A. Merita and I. 20
- We had breakfast at Mrs. Jayawickrema's. She gave us the car to go to Mrs. Solomons'.
- Q. Did you come back from Mrs. Solomons'? A. We sent the car back and came back walking because I brought the baby to town.
- Q. Did you meet 2nd defendant that morning? A. Yes, I met him at the Club about 11 o'clock.
- I sent the baby to Mrs. Jayawickrema's because she was spending the day there.
- Q. Where did you have lunch? A. At Mrs. Jayawickrema's.
- Q. Who are the we? A. 2nd defendant, Merita and I. 30
- Q. In the afternoon tell us what you did? A. We played cards.
- Q. Where? A. At Mrs. Jayawickrema's, and came back to the Club about 5 p.m. The baby was brought in a pram and it was sent by Mrs. Jayawickrema in a car to Mrs. Solomons'.
- Q. Why did you not go? A. It was very early in the evening to go back home.
- Q. From the Club where did you go? A. We went to the station to see the doctor off.
- Q. You and Merita? A. And Mr. Perumal in Mr. Perumal's car.
- Q. Did he leave by that train? A. Yes. 40
- Q. You saw that? A. He left by that train.

(To Court :

Q. How far is the distance from the Solomons' to the Outschoorns' ?

A. About 1½ miles. It is a pretty long way.

Q. A person who wants to come to the Outschoorns from the Solomons' will have to come 1½ miles ? A. Yes.)

Q. After the train left what did you do ? A. Mr. Perumal brought us to the Club. Colonel Fernando was to give us a lift in his car to our boarding.

Q. Colonel Fernando and yourself were both staying in the same
10 place ? A. Yes.

Q. Your husband's birthday was on the 17th April ? A. Yes.

Q. Did you visit the Outschoorn's house one night after dinner ? A. I have never visited the Outschoorn's except on one day when I went for lunch.

Q. Dr. Babapulle's evidence is that some time after dinner you came there and went into a room occupied by Dr. Samahin ? A. Yes, that is false. It is a lonely road from Eltota and I cannot come alone.

Q. What time did Stanley Fernando take you back ? A. About 8-30 p.m. I got to the Solomons'.

20 Q. Have you ever been at Solomons' house after dinner excepting the nights you were away altogether ? A. After dinner I never went out. If I had dinner at Solomons I went to bed.

Q. You deny on solemn oath that you at no time misconducted yourself with the 2nd defendant during that time ? A. Yes.

Q. Your husband's birthday is on the 17th ? A. Yes.

Q. You said you had mentioned the fact that you would come down to Colombo if you could get a lift ? A. Yes.

Q. Did he get a lift ? A. Colonel Fernando promised a lift in his car.

80 Q. Did that happen ? A. No.

Q. What did you do ? A. I came by train.

Q. You had made arrangements to return on the 20th ? A. Yes.

(To Court :

Q. You were finally leaving Bandarawela on the 20th that is Merita, baby and Joslyn ? A. Yes.

Q. That being so why did you come down all the way from Bandarawela to Colombo on the 17th ? A. My father had promised to send the car to return to Colombo for good. I had not much money for all of us to come down to Colombo on the 17th. I bought a second class ticket
40 and came down to Colombo for my husband's birthday. I was not given sufficient time to make any arrangements. It was at the last moment that Colonel Fernando was unable to give the lift. I intended to return back to Bandarawela by train.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
examination
—continued.

When he came to Bandarawela and met me on Good Friday he told me he was going to have a party and was inviting lots of ladies and gentlemen, so I thought I must come.

Q. You did not mind the long tedious journey? A. I wanted to be with my husband on that day and I did not mind the inconvenience.

Q. You brought the baby? A. Yes.

Q. You said you bought a second class ticket? A. I bought a return 2nd class ticket.

Q. Who met you at the station in Colombo? A. My husband met me at the station. 10

Q. That is at Fort? A. Yes.

Q. Why did you not all come down? A. My father was sending the car on the 20th for all of us to return.

Q. You wanted to be with your husband on the 17th why did you not all come down? A. Merita wanted to stay behind. She had a match and all that.)

Q. You arrived on the morning of the 17th? A. Yes.

Q. You had the party that night? A. Yes.

Q. Who were present? A. There were a large number of friends.

Q. Name some of them. About how many were there altogether in 20 the party? A. About 30 to 40.

Q. Who were there? A. Mr. & Mrs. Krishnaratne and Miss Krishnaratne, Mr. Weerasinghe, Mr. & Mrs. Namasivayam, Mr. Tom Ameresekera, Mr. Waldo Sansoni, my father, Dr. Samahin, the Ludowykes.

Q. At the tail end of the party tell us of any discussion that took place? A. Mr. Namasivayam asked me how are you going back. I said I had a return ticket to go by train.

(To Court :

Q. You bought a return ticket to go back? A. Yes.

Q. The baby? A. If I was going by train I was going to take 30 the baby.

Q. When you left Bandarawela your intention was to take the baby back? A. Yes.)

Q. Then? A. Mr. Namasivayam said " what about the Nuwara Eliya dance ". I said I had not given a thought to it because I did not have an idea of going. Then he said let us form a party and let us go.

Q. Who were there? A. The doctor was present, Mr. Namasivayam was present.

Q. What about the Ludowykes? A. I do not know if Ted was there at the moment. 40

Q. Had 2nd defendant anything to say? A. He said what about it.

Q. What did your husband say? A. 1st defendant told Namasi-
vayam if you are taking my wife to the party you must give me permission
to take your wife.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
examination
—continued.

Q. Where? A. He said he will take her out to the pictures and
dinner. Namasi-vayam said he had no objection.

(To Court :

Q. What about the unfortunate baby? A. She was not dis-
cussed at all.

Q. What was going to happen to the baby? A. I still intended
10 to take the child back.

Q. Had you any discussion about the baby with anyone in the party?
A. No. When I was in bed with my husband I asked him about the
baby. He said it will be a very tiring journey for the child. He said it
would be better to leave the child with Mrs. Namasi-vayam as he would be
spending the time there.

Q. How did Miss Ludowyke come to the party? A. My husband
said what about Teddy ask her to join the party. We asked Mrs. Ludo-
wyke for permission. She at first refused. Then my husband said " You
are very narrow-minded and old-fashioned. Merle is going she will take
20 care of Teddy."

Q. How did they show they were narrow-minded? A. They did
not want to send the girl out.

Q. That is father Ludowyke and mother Ludowyke? A. Yes.

My husband told them not to be narrow-minded. After some dis-
cussion they gave permission.

Q. Amongst the guests was Mr. Monty Jayawickrema? A. Yes.
also Lieutenant Cedric Illesinghe.

Q. Was Mr. Jayawickrema aware of this? A. He heard the
conversation and he said he could accommodate two people in the house.

30 Q. His wife was not there? A. She was in Bandarawela.

Q. The following day you were to leave? A. Yes.

Q. Was the time arranged? A. Some time after lunch in the
afternoon.

Q. Were the Jayawickremas informed of your coming? A. My
husband wrote out a telegram in the morning. He wrote the telegram
" Expect two for dinner staying night "

Q. Who signed it? A. My husband signed it.

(To Court :

Q. What was the intention when the wire was sent? A. Miss
40 Ludowyke and I were to stay there.

Q. At that date you had a room at the Solomons'? A. Yes.

Q. You were paying for it? A. When I was out I did not pay.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
examination
—continued.

Q. You had two rooms at the Solomons when you were not in Bandarawela were you paying for the rooms? A. If I was not in the house I did not pay.

Q. You will have to pay for Joslyn? A. Yes, Re. 1 a day. Rs. 3.50 for Merita and baby and I Rs. 5. When baby and I were out the Rs. 5 was saved.

Q. Why was the arrangement made that you and Miss Ludowyke should stay at Monty's when you had the room at Mrs. Solomons'? A. Because three could not stay in the room, and I was to look after the girl. That was the reason why it was arranged that Miss Ludowyke and I 10 should stay at the Jayawickrema's.)

Q. Was the child sent to Namasivayam's on the 18th morning? A. Mr. Namasivayam came. In the same car I sent the baby after lunch with the ayah.

Q. Was your husband at home? A. He had gone to work. He said he would make arrangements and speak to Mr. Namasivayam about it.

Q. What time did you leave in the afternoon? A. About 2-30 p.m.

Q. What time did you go to Bandarawela? A. About 8-30. 20

Q. Where did you go straight to? A. First to Ratnapura.

Q. You had tea there? A. With the Krishnaratne's.

Q. As a matter of fact you have been asked by your husband to drop in at the Krishnaratne's when you first went to Bandarawela? A. Yes.

Q. Did you stop at the Belihuloya Resthouse also? A. Yes, we were very thirsty and we went there for a drink

Q. You reached Bandarawela about 8-30 and where did you go to? A. To Mrs. Solomons'.

Q. The car was driven up there? A. Yes.

Q. You went in? A. Teddy and I got out of the car and went 30 in.

Q. The gentlemen? Mr. Namasivayam and the doctor stayed behind. No sooner I got there I shouted for Merita. She came out accompanied by a boy with a lantern.

Q. At that moment when you got out of the car where were you going to stay? A. At the Jayawickrema's.

Q. Please tell us what happened? A. When we got there my sister persuaded Ted to remain with her, and I could not persuade her to go because she said she would be more comfortable there. I thought there would be no harm in varying the arrangement because Mrs. Solomons was 40 a married woman. Teddy said she did not know the Jayawickremas and she would be more comfortable with my sister. I did not think there was any harm leaving her with my sister.

Q. What was the next thing that happened? A. I went back to the car. I sent Teddy's suitcase and a parcel of cakes sent by my husband to Merita.

Q. It is false that your trunk was taken up? A. I took my things. When I got to the car Mr. Namasivayam said we will drive to Mr. Victor Dias'. I got down and went in. The gentlemen followed me.

Q. Why did you go there? A. Mr. Namasivayam was going to stay there. We had a drink there.

(To Court :

10 Q. Why could not Samahin stay at Victor Dias'? A. I do not know.)

Q. You left Victor Dias' with Dr. Samahin? A. Yes, they all came and saw us off.

Q. What time did you get to Mrs. Jayawickrema's? A. It must have been about 9 p.m.

Q. You had not had your dinner at this time? A. No.

Q. After you went to Jayawickrema's tell us what you did? A. We met Mrs. Jayawickrema and Errol and in the course of conversation I told them that I expected to bring my friend Miss Ludowyke with me
20 but my sister persuaded her to stay in the boarding house. After a few drinks she said let us have dinner.

Q. Who sat at table? A. Mrs. Jayawickrema, Errol, the doctor and I.

Q. Tell us what happened after dinner? A. We were still at table when Mrs. Monty told Errol something.

Q. In consequence of a statement made by her did you see anything been done? A. A room was prepared.

(To Court :

Q. After that why was a room prepared? A. I think Mrs. Monty
30 expected my sister and I or my husband and I. The inference I drew was that one room was prepared and as there was a male a second room was prepared.

Q. How could Mrs. Monty draw that inference from the telegram? A. She expected my sister and I or my husband and I. These are inferences I drew from the fact that only one room was prepared.)

Q. After the room was prepared tell us what happened? A. Mrs. Monty retired to bed early. I was shown my room by Errol.

(To Court :

Q. Why did she not come and show the room herself? Errol's
40 evidence was that she was so annoyed that she left him to do it because she was annoyed. That they waited for this man to leave and as he did not she went to bed in a huff? A. I did not notice anything like that.)

Q. After that you retired? A. Yes.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
examination
—continued.

Q. During that night did you misconduct yourself with Dr. Samahin?
A. No.

Shown the plan D12. Which room did you occupy? A. F.

Q. Had that room a bathroom attached to it? A. No.

Q. A wash basin? A. No. I used Mrs. Jayawickrema's bath and lavatory for the night.

Q. That is on the opposite wing? A. Yes.

Q. You washed before you went to bed? A. Yes.

Q. Brushed your teeth? A. Yes.

Q. The following morning please tell us what you did? A. We¹⁰ had breakfast together before we left. Mrs. Jayawickrema, Errol and I had breakfast.

Q. You left the Jayawickrema's and went with Dr. Samahin to?
A. To pick up Mr. Namasivayam. The doctor went to the Club and I went to the boarding in Mr. Namasivayam's car. There with the assistance of the two girls I packed and I also brought back my suitcase that morning and exchanged it for a bigger one.

(To Court :

Q. It is not true that from the Solomons' house you filled a small attache case? A. No.) 20

We packed all our things and sent the luggage to the station with the ayah. Then went to the station booked the luggage bought the ayah her ticket and went to the Club and met the gentlemen.

Q. Where did you have lunch that morning? A. I told Mrs. Jayawickrema that I was coming with my sister and Miss Ludowyke for lunch there.

Q. That day at Mrs. Jayawickrema's were any photographs taken?
A. Yes.

Q. Who took the snapshots? A. I took some, my sister took some Errol took some. 30

Q. Whose camera? A. It was my sister's camera.

Q. Who got the pictures developed? A. My sister had the snapshots.

Q. What was the camera? A. It can be produced because she has it at home.

Q. This could not have been taken by Errol? A. No. It was taken by me or my sister.

(Mr. Wickremanayake objects. I allow it.)

In this picture are reading from left to right Miss Ludowyke, Mrs. Jayawickrema, the 2nd defendant and Errol. 40

Q. What time of the day was it taken? A. Just before we left after lunch.

Q. Then your party left? A. Yes.

Q. Why is it that you are not in the picture? A. I think it was taken by me.

Q. Why is it your sister is not there? A. Or it may be she took it and I was looking after the luggage or *vice versa*.

Q. You left about 5-30? A. Yes.

Q. Where did you go to? A. Nuwara Eliya—St. Andrew's Hotel where my brother was.

Q. Tell us what you did there? A. We went to the pictures for 10 the 6 o'clock show.

Q. You came back to the hotel? A. 8-30 or 8-45 and sat for dinner.

Q. Did your brother dine with you? A. No. He dines at the next table. He gave us his room.

Q. Did you use his room at night? A. We used his room.

Q. You changed into the dress clothes? A. Yes, to go to the dance.

Q. All this time your dance saree was carefully packed up in your trunk? A. It was not a very expensive saree.

20 (To Court :

Q. You are particular about your appearance at a dance? A. What for?

Q. Can you dress without a mirror? A. Yes.

Q. All by yourself? A. Yes.

Q. Was there a mirror in the room? A. I can dress a saree without a mirror.

Q. Where did you change to go to the dance? A. At St. Andrew's Hotel in the bathroom.

Q. All the ladies? A. Yes.

80 Q. The gentlemen? A. In the room.

Q. Why were the positions changed? A. We were very late already for the dance. There was no time for any argument. One of the gentlemen said that Mr. Namasivayam likes to have everything in one place because he found it difficult to dress. We did not argue, we knew his difficulty and we went to the bathroom.

Q. You went to the dance and returned at what time? A. 4 a.m.

Q. What time did you leave the hotel? A. About 7 or 7-30 a.m.

Q. Where were you from 4 till 7-30? A. We were in my brother's room.

40 Q. All of you? A. Yes.

Q. The whole party? A. Yes,

No. 34
Plaintiff's
Further
Evidence
Merle Alles
examination
—continued.

Q. What was the furniture in that room? Can you remember?
A. There was a bed, a wardrobe, two or three chairs.

Q. Was there a couch in that room? A. No.

Q. Is it correct to say that you all slept and you slept with the 2nd defendant? A. No, I did not sleep with the 2nd defendant. We were all seated down.

Q. You left in the morning about 7-30 and came to Bandarawela?
A. Yes.

Q. The same day did you leave for Colombo? A. Yes.

Q. What time did you reach Bandarawela? A. About 11. 10

Q. Had you lunch at Bandarawela? A. We had lunch with Mrs. Outschoorn.

Q. You have been to Mrs. Outschoorn's? A. That was the first visit I made. I went on the invitation of her son and daughter.

Q. Did Namasivayam lunch with you? A. We really came back to Bandarawela because he had a lunch engagement at Victor Dias'.

Q. You reached Colombo at what time? A. About 7 p.m.

Q. Did you drop Miss Ludowyke at her place? A. No, she stayed with us.

Q. Why? A. We asked her to stay for a few days. 20

Q. Had you not got tired of her? A. I do not get tired of my friends. We were alone at home Merita and I so we asked her to stay.

Q. Which room did Miss Ludowyke use? A. She used my husband's bedroom.

Q. Was anyone using the guest room at that time? A. A day or two after my aunt came and she used the guest room.

Q. Ordinarily when she stays there what room does she use? A. My aunt used the guest room whenever she stayed after my father left.

Q. Now we come to Merita's birthday 28th April—you had a big party? A. It was her 18th birthday so she asked daddy to give a big 30 party as she had attended previous parties.

Q. Mr. & Mrs. Namasivayam were also in that party? A. Yes.

(To Court :

Q. At the time you went to Bandarawela and Nuwara Eliya for the dance how were your relations with the Namasivayams? A. Good.)

Q. Please tell us what happened at the birthday party? A. My husband was not at home. There was a row at the party. I did not see the whole thing. I came into it when Mrs. Namasivayam came crying saying they were leaving. When I came out to say "Good night" to them Mr. Namasivayam insulted me. 40

Q. Was Ladislaus Fernando in the party? A. Yes.

Q. Do you know why you were insulted?

(Mr. Wickremanayake objects. I disallow the question.)

I informed my husband of it and he replied by P16.

Q. Did you drop the Sris after that? A. Yes.

Q. Up to this date have you made up with the Sris? A. I have nothing to do with them.

Q. Have you been to their house after this? A. No.

Q. Have you met Mrs. Namasivayam anywhere? A. I have seen her.

Q. If you meet her at Cargills you look the other way? A. I smile and pass off.

10 Q. Namasivayam? A. I cut him dead.

I have never been to a party with the Namasivayams after this.

Q. Did you receive a present from the Namasivayams on your birthday that year? A. Yes.

Q. Why did you receive it if you were not on terms with the Namasivayams? A. I was not on bad terms. My husband and I had sent her a present. This present was from Mrs. Namasivayam.

Q. Is it not strange for a woman to accept a present from the woman whose husband insulted you? A. No. She was not responsible for her husband's action.

20 P42 is the card that came from both in 1940. P43 is the card that came in 1941. Mani is Mrs. Namasivayam. Sri is Mr. Namasivayam.

Q. Why did you keep all this? A. I preserve all things I receive.

Q. You sent a reply to your husband to the letters you received? A. Yes.

I received P18 of 4th May from my husband. He thought I was angry with both. I had fallen out with the husband but not with the wife. That is the way he has put it.

Q. About the end of April, 1941, were the Namasivayams going up to Bandarawela for a holiday? A. Yes.

30 Q. How did you know that? A. Both of them told me.

Q. Was it your intention that your child Hortense should go with them? A. I told my husband that they had invited my child.

Q. Your husband accepted the invitation to send the child? A. Yes.

Q. Was the child sent up? A. No.

Q. Why? A. Because of the sister and also the row.

Signed. R. F. DIAS,
D. J.

Case postponed for tomorrow.

Signed. R. F. DIAS,
D. J.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
examination
—continued.

22nd January, 1943.

Same appearance as before.

With reference to the evidence of Mrs. Lavinia Alles yesterday, Mr. Wickremanayake moves under the Bankers' Books section of the Evidence Ordinance to mark the statement of the Chartered Bank of the account of Mrs. Lavinia Alles showing the state of the account from 30th November up to date.

Mr. Jayawardena for the plaintiff has no objection.

Proctor for the 2nd defendant has no objection.

It is marked 1D19.

10

Before I admit it let it be shown to the other side.

Mr. Ameresekere now says that the document is unsigned.

Mr. Wickremanayake connects the document with the covering letter 1D20.

Mr. Ameresekere says he is not satisfied that 1D14 is the document which accompanied 1D20.

I admit the document and note Mr. Ameresekera's objection.

Mr. Wickremanayake further says that his client had at the time another cheque book from the Chartered Bank which has not been used and which is in Court which is handed to Mr. Jayawardena for the purposes of examination. He says this book was kept in readiness to be used when the current book is exhausted. 20

Mr. Jayawardena looks through the foils and counterfoils.

The cheque book is handed back to Mr. Wickremanayake.

MERLE ALLES, sworn.

Further examination-in-chief.

Q. In May, 1941, your mother-in-law called on you? A. Yes, she called on the 8th May.

Q. Will you tell the Court what transpired? A. She said that there was gossip going on in Colombo. 30

Q. What did she say? A. She said that I was going about with Dr. Samahin.

(To Court :

Q. What did she say? A. She said there was lots of talk about it and she had come on behalf of the members of the family to speak to me as my husband was away and as she thought he did not know anything about it.

Q. What did she want you to do? A. She asked me not to go about and she wanted to know whether I had written about it to my husband. I said he knows all my movements and I had written to him about it. 40

Q. Did you admit or deny the imputations? A. I denied it.)

Q. Did you write to your husband about this visit? On that very day I wrote to him. That day my husband rang me up: I was crying and I told him about what had happened and he told me to write and let him know all about it.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
examination
—continued.

Q. In reply you received P28? A. Yes.

Q. You spoke on the 8th May? A. Yes, and I wrote to him on the 8th. Thereafter I got the letter dated 9th May.

Q. You now know that your husband wrote another letter to his mother? A. Yes.

10 Q. In which he took your side? A. Yes, he did.

Q. The letter P38 is dated the same day? A. Yes.

(To Court :

Q. Would you also say your husband implicitly believed you? A. Yes.)

Q. In June was the anniversary of your wedding? A. Yes.

Q. He wrote to you P29? A. Yes.

Q. His mother was living in Laurentum? A. His mother and two unmarried daughters.

Q. In that letter he definitely asked you not to invite the people at 20 Laurentum or Liseux to come to your daughter's birthday? A. Yes.

Q. He says those who remember can come? A. Yes.

Q. In July you were down with renal colic? A. Yes.

Q. Can you give us the date? A. 9th July.

Q. Will you please tell us how you happened to call in Dr. Frank Gunasekera? A. On the 9th July after lunch I had a very severe pain. I told my sister about it and I said I would like to have a doctor and she telephoned Dr. Frank Gunasekera. I was in terrible agony.

Q. Did Dr. Samahin come on that day? A. Yes.

Q. What time? A. About 15 or 20 minutes before Dr. Frank 80 Gunasekera came.

Q. How did he happen to come in? A. I do not know at what time.

Q. How did he come to the room? A. My sister brought him in to see.

Q. When Dr. Frank Gunasekera came in was Dr. Samahin in the room? A. He was.

Q. Where was your sister? A. She came with him and when Dr. Frank Gunasekera's car came in she went out to receive the doctor.

(To Court :

40 Q. Dr. Samahin remained? A. Yes.)

Q. Did Dr. Samahin examine you at all before Dr. Gunasekera came in? A. No.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
examination
—continued.

Q. Dr. Gunasekera examined you and prescribed? A. Yes.

(To Court :

Q. Have you been examined by a doctor while your husband was in the house on any occasion? A. Yes.

Q. Which necessitated your exposing the lower part of your body?
A. Yes.

Q. Has your husband been present? A. Yes.

Q. Who is the doctor? A. Dr. Wickremasooriya.)

Q. On the 9th Dr. Frank Gunasekera gave you a prescription P36?
A. Yes. 10

Q. What was your condition? A. I had severe pain.

Q. Did you vomit on that day? A. No. I could not retain anything for two days.

Q. On the 10th the prescription that was given on the 9th was changed? A. Yes.

Q. He called at your place on the 11th also? A. Yes.

Q. When did you pass the stones? A. On the 10th evening. I showed it to Dr. Frank Gunasekera who took it away.

Q. Were they returned to you? A. No.

Q. He did not visit you after the 11th? A. No. 20

Q. You were relieved after the stone was passed? A. Greatly relieved.

Q. You were on your back how long? A. About 10 days.

Q. Did you inform your husband of your illness? A. When I was able to write, I wrote to him. I wrote in pencil.

Q. Before that you received P20 dated 11th July? A. Yes.

Q. Before the 15th you wrote a letter to him? A. Yes.

Q. He wrote to you on the 15th P25? A. Yes.

(To Court :

Q. You admit that is the letter of a loving husband? A. It is.) 30

Q. When did you have your periods in July? A. 12th July. That was the first day.

Q. Were you still in bed at the time? A. Yes.

Q. Will you tell us what happened? Did anybody assist you? A. I was asked not to move from bed and Merita helped me.

Q. Mrs. Alles, Dr. Gunasekera ceased to visit you on the 11th did you continue the medicine? A. He gave me the last prescription and asked me to take 6 or 7 bottles. I took the medicine till about October.

Q. How long had you your periods? A. 5 or 6 days.

Q. Did you at that time conspire with the 2nd defendant to get down your husband to Colombo? A. I never did anything of the kind. 40

(To Court :

Q. You swear at this date you did not know you were pregnant ?

A. No.

Q. You did not know you were pregnant in July ? A. No.

Q. You had no reason to think you were pregnant in July ? A. None whatever.

Q. You now know the medical evidence—don't you ? Some of the doctors have fixed 24th June according to Dr. Attygalle as the date conception took place or two weeks on either side, then we got 19th June, according to Dr. Wickremasooriya and Dr. Navaratnam and Dr. Frank Gunasekera says 17th to 18th June. But you had no reason to think you were pregnant ? A. No.

Q. You had a period in July ? A. Yes.

Q. You did not meet your husband in June at all ? A. No.

(To Court :

Q. You met your husband between 27th February and 4th March in Jaffna ? A. Yes.

Q. The next time you came together was the few minutes near Miller's shop in Bandarawela ? A. Yes.

20 Q. The next day you lived together under the same roof was 17th April ? A. Yes.

Q. The next time was the 9th August ? A. Yes.

Q. You accept them ? A. Yes.

Q. In August there were the races ? A. Yes.

Q. Your husband came down for the August races ? A. Yes.

Q. He wrote to you from Jaffna on the 6th August ? A. Yes.

(The letter is marked P44.)

(To Court :

Q. It begins darling and ends "love and kisses ever yours".)

30 Q. That is the letter of a husband who was looking forward to see his wife and his daughter again ? A. Yes.

Q. He arrived by the morning train and you met him at the station ?

A. Dr. Samahin, myself and the daughter met him at the station. We went in Dr. Samahin's car.

Q. In the afternoon you went to the races ? We went shopping that morning and went to the races in the afternoon.

Q. How, in Dr. Samahin's car ? A. Yes.

Q. After the races you came home ? A. Yes.

Q. In the second defendant's car ? A. Yes.

40 Q. Was 2nd defendant also at the races ? A. Yes.

Q. You were one party ? A. Yes.

No. 84
Plaintiff's
Further
Evidence
Merle Alles
examination
—continued.

Q. Merita went to the races? A. Yes, she went with my father to the races.

Q. After the races you came home? A. Yes.

Q. Did you go out? A. No.

Q. That night you and your husband spent together? A. Yes.

Q. You had intercourse? A. Yes.

Q. The following day was Sunday did you go to Church? A. No.

Q. Did you sleep late? A. Yes, till about 9-30.

Q. In the afternoon what did you do? We spent the afternoon in bed, my husband and I. 10

Q. Did you go out at all that day? A. No.

Q. Did you have relations that afternoon? A. Yes.

Q. Your husband left for Jaffna by the evening mail? A. Yes. I think the train was 6-25 p.m.

Q. Before he left did he ask you to do anything in connection with his job? A. He asked me to see a cousin of his.

Q. Who? A. Dr. Abeysundera.

Q. Who is Dr. Abeysundera? How is he related? What were you to ask him? A. To see his brother-in-law the Attorney-General.

Q. You saw Dr. Abeysundera? A. I did. I made an appointment and saw him. 20

Q. After your conversation with Dr. Abeysundera did you write a letter to your husband? A. I wrote about the conversation and all that Dr. Abeysundera had to tell.

Q. In reply you received letter dated 15th August? A. Yes.

Q. That also ends love and kisses ever yours? A. Yes.

Q. This letter says that mother did come and see your husband when he was down for Easter—that is between the 9th and 17th? A. Yes.

Q. Did the 1st defendant mention to you that fact on the 9th or when he came to the birthday? A. I first heard it from Dr. Abeysundera that his mother had gone to see Stannie. 30

Q. Did it surprise you? A. It did surprise because he usually tells me everything that happens in the house.

Q. He did not write to you about it either? A. No.

Q. Your husband returned from Jaffna on the 20th August? A. Yes, 22nd August.

Q. After that you resumed your usual normal life in Colombo? A. Yes.

Q. At that date did you know you were pregnant? A. No.

Q. Had you a period in August? A. On the 11th. 40

Q. How long did that last? A. One day.

(To Court :

Q. Was it a period or a blood-stained discharge? A. I bled a little.)

Q. After your husband returned from Jaffna the 2nd defendant continued to visit you as usual? A. Yes.

Q. And he was received with the usual cordiality by yourself and your husband? A. Up to the time of my husband's running away it was the same.

Q. We now come to the month of September. Had you a period in that month? A. No.

Q. Did you mention that fact to your husband? A. Yes.

Q. What did he say? A. He asked me to wait and see for the next month to see what happens.

Q. Did anything happen next month? A. Nothing happened and then he asked me to go and see Dr. Wickremasooriya.

Q. What date? A. 23rd October.

Q. You saw Dr. Wickremasooriya at his bungalow on the 23rd October? A. Yes.

Q. You were examined by him? A. Yes.

Q. Were you asked when you had your last period? A. I told him on the 18th August.

Q. What was your condition at that time? A. Very run down.

Q. Were you at that time still taking the medicine Dr. Frank Gunasekera had prescribed? A. Yes.

Q. What did Dr. Wickremasooriya say after examination? A. He said I was in my fourth month.

Q. Is that the first time you knew you were pregnant? A. Yes.

Q. Did you mention this fact to your husband when you came home? A. I gave him a detailed account of what happened in Dr. Wickremasooriya's consulting room.

Q. After that did you go out at all for parties? A. I went out as usual.

Q. With your husband? A. Yes, sometimes with my husband other times with my friends.

Q. In November Dr. Wickremasooriya was called into your house? A. Yes.

Q. What was the date? It was a Saturday? A. I can't fix the date.

Q. He examined you? A. Yes. My husband was by me. He was near the head of my bed. The doctor examined me.

(To Court :

Q. He examined your body without any clothes on it? The part was exposed? A. Yes. There was a sheet,

No. 34
Plaintiff's
Further
Evidence
Merle Alles
examination
—continued.

Q. Your husband was present? A. Yes.

Q. The places where he pressed was there a sheet? A. There was no sheet where he pressed.)

Q. After the examination did Dr. Wickremasooriya tell you anything? A. He went out and spoke to my husband. I got dressed and came out.

When I got out of bed and got dressed and went out he was talking to my husband.

Q. He gave a prescription? A. Yes.

Q. What did he say? A. He said I was in my fifth month and 10 asked me to look after myself, that I was run down and to take plenty of food.

Q. What time did Dr. Wickremasooriya call? A. Between 5-30 and 6-30.

Q. After Dr. Wickremasooriya left a servant in your house was reported to be suffering from a severe pain? A. The ayah.

Q. What was that? A. An earache.

Q. Who was the ayah? A. Jane.

Q. Did you prescribe for her? A. I told her whenever I got an earache I used to put a piece of garlic into my ear. A whole garlic—knock 20 off a bit and put it in the ear.

Q. Did that relieve the pain? A. Unfortunately she had gone and pushed it right inside.

(To Court :

Q. Where did you want it pushed? A. I wanted her to keep it just at the entrance.)

Q. What did your husband do? A. 1st defendant tried to get it out and pushed it further in.

Q. You were a physician he was a surgeon? In consequence he got very angry? A. Yes. 80

Q. With whom? A. With me.

Q. Is that the first row you had in your married life? A. Yes.

Q. Who called that evening? A. Mr. and Miss Ludowyke came that evening.

Q. It was very fortunate because the lady was taken to hospital in Mr. Ludowyke's car? A. Mr. Ludowyke drove the car and the patient was taken to the Outdoor Patients' Department. About half hour later they returned. I believe the woman was struggling such a lot they could not remove it. The next morning when Dr. Samahin came my husband complained to him that I had done a very foolish thing. Dr. Samahin 40 said " why worry, I will give you a letter and I will get the doctor personally to attend to it ".

Q. That night after they returned from hospital was peace restored ?
 A. He was very angry and he vented it all on me.

Q. Did he cool down at all that evening ?
 A. At dinner time. I had forgotten the row and he had forgotten the row. I always tried my best to give him a good dinner. I sat for dinner and had my dinner.

Q. Merita there ?
 A. She had gone home then.

Q. When did she leave ?
 A. 24th August.

Q. After that you continued to go out with your husband ?
 A. As usual.

10 Q. December is a month where there is a lot of interesting functions ?

A. Yes.

Q. The annual Police dance falls in December ?
 A. Yes.

Q. You had been attending that dance in previous years regularly ?
 A. I have been attending that function right along from the time I learned to dance.

Q. How did you get your tickets ?
 A. After my husband's brother joined the police force he used to send us the tickets.

Q. Were arrangements made for you to attend this dance for you and your husband ?
 A. We had previously arranged that we were all going in a party. This was about 15 days before.

Q. Was the arrangement made on the 5th December ?
 A. No.

Q. What was the arrangement ?
 A. My husband and I were going in the company of Mrs. Ludowyke and two daughters and Dr. Samahin.

Q. Did you get tickets for all ?
 A. I got three tickets from my brother-in-law.

Q. The tickets were for yourself, 1st defendant and 2nd defendant ?
 A. No for my husband, myself and my sister.

Q. Who is the brother-in-law ?
 A. Clement Alles.

80 Q. That arrangement was made and did your husband attend the dance ?
 A. He did not attend with me. He went in other company.

Q. When did you come to know he was not attending the dance with you ?
 A. Only that morning.

Q. He told you so ?
 A. Yes.

Q. What was the reason ?
 A. I asked him what about the dance. He said I have changed my mind as I have promised to make a fourth in Mr. Namasivayam's party.

Q. At that date had you had your row with the Namasivayams' ?
 A. That was in April.

40 Q. Your husband knew about it ?
 A. He knew about it.

Q. That was an act of disloyalty on his part ?
 A. Yes, it hurt me a lot.

No. 84
Plaintiff's
Further
Evidence
Merle Alles
examination
—continued.

Q. You had not called on them after the row of the 28th April? A. Yes.

Q. Your husband after his return from Jaffna did he call at the Namasivayams to your knowledge? A. Yes, he did.

Q. Did he go out with them?

(To Court :

Q. Do you make any suggestion of impropriety between your husband and Mrs. Namasivayam?

(Mr. Amerasekera has no objection to my putting the question.)

A. Improper conduct.

Q. Improper conduct sexually? A. No, I do not make that allegation. against my husband.

Q. Any other impropriety? A. I think my husband was very fond of her.

Q. In love with her? A. I think.)

Q. On what ground do you base that he was in love? A. When he came from Jaffna I told him about the row. I had written to him. I asked him not to associate with them because he had asked me also not to associate with them. I told him Mr. Namasivayam has not apologised to me and I told him that he ought not to go out with them. He did not take notice of what I said.

Q. And you took presents? A. She sent a present and I did not wish to return because it would be an insult.

Q. Is that not rather inconsistent conduct? A. Why Sir.

Q. Why not? A. Because I was not angry with Mrs. Namasivayam.

Q. You thought he was very fond of her in the sense a married man should not be fond of a woman? A. Yes.

Q. What is your ground? A. He left me in the house and took her about.

Q. What was the intention? A. Took her for dances and pictures and did not take me out and allowed Dr. Samahin to take me.

(That was after he came from Jaffna.)

Q. You wrote to your husband to Jaffna did you receive a letter from your husband in these terms—P13 read? A. Yes.

Q. You say after he returned did he to your knowledge visit the Namasivayams? A. Not to my knowledge because he used to say that he used to go to Mr. M. T. de S. Amerasekera's bungalow for consultation or that he was entertaining lawyers from Jaffna.

Q. But he went to see the Namasivayams? A. I found it out myself.

Q. Please tell us? A. One day he was dressed and ready to go out for dinner. He said the lawyers whom he was expecting would come to give him a lift. A car came and stopped at the gate, the car switched

off the lights, he kissed me and went out so I felt suspicious why his friends could not come in so I ran up to the gate and found it was the Namasivayam's car. The number of that car was Z 7075.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
examination
—continued.

Q. That morning he said he was going with the Namasivayams?

A. I was very hurt because I had told him previously that Namasivayam had not apologised and I did not like him to go with them. I said he must go with me or he must go with her and live with her.

I was fed up. After he left the house to go to the office I ran away to Mrs. Walles'.

10 Q. Were you leaving the home for good? A. I was very sorry.

Q. Did you intend to return? A. The child was there and I intended to return.

Q. In the evening did your aunt come? A. He came to my aunt's place.

Q. Did you fall into his arms? A. He said he was very sorry and he said if I was hurt he will not go for the dance with the Namasivayams and he asked me to come back for his sake and for the sake of the child.

Q. You came back? A. Yes.

20 Q. What was the arrangement? A. We were both not to go for the dance. That was the decision at my aunt's bungalow.

Q. Hard on Merita? A. She was not well and she could not come.

Q. When you came back was there a variation from the contract?

A. He was chatting to me for some time and the telephone went. He went and answered and came back and said he was afraid he will have to break his promise to me as the Namasivayams will not take an excuse. In consequence he went for the dance

Q. Before he went did anyone call at the house? A. The doctor called and the Ludowykes called.

30 Q. What was Dr. Samahin told? A. He told Dr. Samahin what had happened.

He said: "Can't you persuade this girl to go for the dance. I have tried to persuade her but she insists on not going for the dance. Then the doctor said if you can't persuade her I will not be able to and went away. When the Ludowykes came my husband was dressed. I was still in the same costume I returned from my aunt's. They were also told the same thing and they went. He tried to persuade me but I did not wish to go.

40 Q. The Ludowykes went, the doctor went leaving you and your husband together? A. Yes.

Q. He went with the Namasivayams? A. He went to the garden and broke an orchid and said promise me you will come for the dance with Dr. Samahin. I had no other way of coming home with him.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
examination
—continued.

Q. He did not give the orchid to you? A. No. He wore the orchid.

Q. Did you say you will come with Dr. Samahin? He said he hoped to see me with Dr. Samahin at the dance. He went off in Namasivayam's car.

Q. What did you do? A. I was very angry. Afterwards I thought why should I stay at home when everybody had gone. I therefore telephoned the doctor and asked him to take me to the dance.

Q. Is it true that the 1st defendant told you that in that condition you should not attend public functions? A. No. 10

Q. Was your condition such that you were not in a position to go to a dance? A. I went for the medical dance and nobody knew of my condition.

Q. Is it true that it is bad for your health to go for dances? A. No.

Q. You met your husband at the dance? A. Yes.

He was seated with the Namasivayams. I went and sat in front of him with the Ludowykes.

Q. You gave your husband a number of dances? He came and asked me and I danced with him. I said it was not quite a correct thing to do but he said he had explained it to them. 20

Q. What time did you leave the dance? A. About 2-30 or so. Our company left at that time, the Ludowykes, 2nd defendant and I.

(To Court :

Q. Why was it a wash out? A. The girls were working and they wanted to go.

Q. 1st defendant remained behind? A. Yes.

Q. How many dances did you have with your husband? A. 4 or 5.)

Q. How did you come back? A. In doctor's car.

Q. Who were in the car? A. The Ludowykes the doctor and I. 30 They dropped me and went away.

Q. What time did your husband arrive? A. It was in the early hours of the morning. It was about 5 a.m. There was light.

Q. Did you get up? A. Yes. He came to my room peeped at my bed and went away. He did not say one word. I did not say a word.

In November I removed my bed because the baby was disturbing me.

Q. The following day did you discuss this matter? A. No.

Q. Did the 2nd defendant call after that? A. The 2nd defendant had lunch with us on the 6th.

Q. He was received very cordially by your husband? A. Yes. 40

Q. Not the slightest differences shown? A. No.

Q. After that was the Silver Wings Carnival? A. Yes, on the Sunday.

Q. What happened? A. Dr. was at home as usual for lunch. At lunch Dr. suggested going to the Silver Wings Carnival. 1st defendant said he had made arrangements to go with the Namasivayams and asked him to bring me.

(To Court :

Q. Until the doctor broached the subject of the Silver Wings Carnival at lunch had the question of the Silver Wings Carnival been raised? A. I asked him on Saturday. He said there was no car. I said why not take the child. Then he said we have no car.

Q. The decision was neither of you were going? A. No.

Q. Till he mentioned—the 2nd defendant broached the subject he had not told you that he had made arrangements to go with the Namasivayams? A. He did not tell me till that Sunday afternoon at lunch.)

Q. When he said he was going with the Namasivayams what did you say? A. I said you are still persisting in going with these people after my asking you not to go.

Q. Were you angry? A. I was very hurt.

20 Q. Ultimately in the evening was it decided that you were to go with the 2nd defendant? A. Yes.

Q. Did you say it openly? A. Yes. I said I was going with doctor.

Q. Did he protest against that? A. No.

Q. You went to the Silver Wings Carnival? A. Yes.

Q. With Dr. Samahin? A. Yes.

I went with Dr. Samahin and I met my husband's brother Clement Alles. We went to the carnival. He called and picked me up and the Namasivayams came and picked my husband up.

30 Q. There was no dancing there? A. There was dancing but I did not dance. It was very crowded and the floor was too hard I thought for dancing.

Q. Did your husband dance? A. Yes.

Q. With whom? A. With Mrs. Namasivayam. Mr. Namasivayam danced with Miss Peter. There were two or three dances and they exchanged partners.

Q. What time did you come? A. I came after my husband.

Q. What time? A. About 12 midnight.

Q. 2nd defendant came home and dropped you? A. Yes.

40 Q. At that time your husband was at home? A. Yes.

Q. He was in bed when you came? A. He was in bed but awake.

Q. After that was the Medical dance? A. Yes.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
examination
—continued.

Q. That was on 19th December ? A. Yes.

Q. Up to this time there was no request by your husband to you not to go with the 2nd defendant or anyone else ? A. He never spoke to me on the subject.

Q. He was still on the same affectionate terms at this period ? A. Yes.

Q. When did you arrange to go for the Medical dance ? A. After the Police dance. One day after the Police dance the doctor invited us for the Medical dance.

Q. Invited us ? Who ? A. My husband and I. 10

Q. Did your husband and you accept the invitation ? A. Yes.

Q. Both of you agreed to go ? A. Yes.

Q. You had been his guest the previous year ? A. Yes.

Q. When did you know that the 1st defendant was not going ? Who was to form the party ? A. Mrs. Ludowyke the two girls, my sister Merita my husband, 2nd defendant and I.

Q. Where was your sister coming from ? A. Kandana.

Q. When did you know 1st defendant was not going ? A. On the day of the dance.

Q. What time ? A. I think it was sometime in the afternoon. 20
When my sister telephoned and said she had arrived.....

Q. Till then you did not know ? A. No.

(To Court :

Q. At that date did you know your husband was making arrangements to leave you for good ? A. None whatever.

Q. Do you say you had given him no cause ? A. No.)

Q. That is the first intimation you had that he was not going ? A. When my sister telephoned he asked me to come to the telephone. He said the Attorney-General had sent for him that morning and had given him a big brief. He said that I must go for the dance as all his people 30 were going and that I must go with the doctor.

Q. He came back in the evening from the Courts ? A. He came rather late.

Q. Did you try to persuade him to go ? A. I asked him why he was late. He said he had a lot of work. He had to go through the papers in the Attorney-General's Dept. He said I must go for the dance and I told him I had made up my mind not to go. He said I must go for the dance otherwise I will disappoint Merita. I said I could not go without him because his people were there. He then suggested that I should go with my brother. I rang him up. When we were chatting the 2nd 40 defendant came. Then my husband said Sambo for the first time in your life you are going punctual for a dance. Then we went to dress and my husband was speaking to 2nd defendant. My husband was dressed in sarong and banian.

Q. You had dinner together? A. Yes, the doctor my brother, my husband my sister and I sat to table.

Q. When you were at dinner the Ludowykes arrived? A. Yes.

Q. You went off to the dance leaving your husband and the baby in the house? A. Yes, Ludowyke was also there.

Q. What time did you return? A. About 3-30 a.m.

Q. Who brought you? A. The doctor dropped us at the gate.

Q. How did the Ludowykes go? A. My brother took them. My brother was living at Bambalapitiya, Kotelawala Place. 2nd defendant left me at the gate and went. The door was open and the light was on. I found my husband the baby and most of the furniture had gone. The cookwoman came crying and said that my husband had run away with the furniture and the baby. Then I walked to my husband's room. I found an empty room. I saw everything gone even the pictures had been removed. I went into the baby's room and found the same thing. I went to his office room and found the same thing. When I came to the hall I found the frigidaire gone and the things I had bought for Christmas —butter, ham, etc.. were all thrown on the ground. That is the last thing I remember.

20 Q. After that what happened? A. The next thing I knew was that I was in Kandana.

Q. Did you come back next morning? A. Yes. My brother and sister brought me.

Q. The 20th was the birthday of the 2nd defendant? A. Yes.

Q. Did you give a present to 2nd defendant the previous night?
A. No.

Q. That morning you received the letter P2 on the 20th morning you received the letter dated 19-12-41? A. Yes.

Q. What time of the day did you receive this letter? A. It
80 came by express mail between 10-30 and 11 a.m.

P2 read. Is the first sentence a correct statement to make? A. No. He at no time asked me not to go with Dr. Samahin.

P2 read to witness.

Q. Did he ever intimate to you to desist from any association with the 2nd defendant? A. No.

Q. Had you repeated violent quarrels at any time? A. Except what I referred to in my evidence there were no quarrels.

Q. Were there outbursts? A. Not that I am aware of.

Q. Did he at any time exhibit his disgust or indicate his disapproval
40 to you? A. Never.

Q. Did he take steps to dissolve the marriage? A. No.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
examination
—continued.

Q. To this letter you wrote in reply D5 dated 22-12-41 why did you say which " I suppose you thought were your own " ? A. I said that because my father furnished the house in Shady Grove Avenue. My father bought some of the furniture. He ran away with them he can have them.

Q. What was the reply he gave the reverend father? Were you present there at the time? A. Yes.

One of the Redemptorist priests came from Kandy. He spoke to me first and then to my husband.

Q. When was that? A. Just before my husband left.

Q. When did this priest speak to you? A. Between the Police 10 dance and the Medical dance.

Q. He had been here sometime? A. He was preaching a retreat.

Q. What was the reply your husband gave? A. He said if you have come here to talk on behalf of my mother and brother I do not think I can entertain any conversation on their behalf. Then he went away. My husband said there was no ill-feeling between us.

(To Court :

Q. The point is that somewhere an Irish priest came and spoke to you both? A. Yes.)

Q. Whom was he referring to? A. His mother and brothers. 20

Q. You make that charge against all his brothers? A. Except one the police officer.

Q. Is that your position? A. Yes, it was drafted by my counsel.

Q. You gave your story to your lawyers and also all the letters that were in your possession? A. Yes.

Q. You received no reply to that letter? A. No.

Q. Were you allowed access to your child? A. No.

Q. No steps were taken by your husband for the dissolution of the marriage? A. No.

Q. You filed action? A. Yes. 30

(Counsel wants to mark the answers to the interrogatories.

I say that anything that is already part of this record need not be specially marked.)

Q. This allegation of adultery made against you you say is entirely false? A. Yes. They are all utterly false.

Cross-examined by MR. MISSO : Nil.

Signed. R. F. DIAS,
D. J.

Court adjourned for lunch.

Signed. R. F. DIAS, 40
D. J.

After lunch.

Cross-examined by MR. WICKREMANAYAKE.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination

Q. Your case is that the 1st defendant maliciously deserted you on the 19th at the instigation of his mother? A. Yes.

Q. You have told us that his mother objected to the marriage? A. Yes.

Q. And you told us also that from the date of the marriage his mother had nothing to do with you? A. Not that she had nothing to do with us, at a time of illness and so on she used to come and see us.

10 Q. And other formal visits? And for Christmas and New Year. On particular occasions? A. If she remembers an occasion she comes.

Q. That is to say if there was a birthday or something like that she would come? A. Yes.

Q. And you and your husband when would you visit her? A. I cannot say occasionally Christmas and New Year and we have gone for her birthday.

Q. Mr. Alles' version is that there was objection to the marriage but some time after that the relations became cordial? A. I think that is quite right when he says that we were friendly for a time.

20 Q. Quite cordial? A. Yes, till she came and abused me our relations were cordial.

Q. That is till April, 1941, relations were cordial? A. Yes.

Q. Between you and your husband on one side and his mother on the other? A. Yes.

(To Court :

Q. You had then no cause to complain against her till she started this story about the gossip? A. No.)

Q. Prior to the talk about the gossip she made no attempt to estrange your husband's feelings from you? A. I do not think so.

30 Q. And you and your husband visited Laurentum quite frequently in 1937, 1938, 1939? A. In 1937 and 1938 quite frequently.

Q. Your mother's displeasure against you recommenced only about the talk to you about the gossip she had heard? A. Yes.

Q. Right through from the time your husband married you he was not earning very much? A. Yes.

Q. You knew that? Is it correct that he got assistance from his parents? A. Now and again he used to get money from his father with special instructions that his mother should not be informed about it.

40 Q. From his mother he got no assistance whatever? A. Not that I am aware of.

Q. You were at no time aware of any money that he received from his mother? A. No.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

Q. As a matter of fact there was some resentment also owing to the fact that his mother was not helping him? A. Yes.

Q. On the part of you and him? A. Yes.

Q. Right along from the start you said he was not earning anything, the most he ever earned was when he was Crown Counsel? A. Yes, and when he joined Mr. Ameresekere he used to earn a little more.

Q. What do you mean by that? A. Mr. Ameresekere used to give him work and send him out and things like that.

Q. You mean he was Mr. Amerasekera's junior in certain cases? A. Yes. 10

Q. The chief trouble throughout your married life was his lack of money? A. Yes.

Q. You are perfectly certain his mother never gave any help at all? A. Not to my knowledge.

Q. You swear to that? Yes.

Q. You swore an affidavit for the purposes of the alimony inquiry? A. Yes.

(Shown affidavit). This is signed by me (paragraph 7 last sentence put to witness). You have stated there "The respondent also receives substantial sums of money from time to time from his mother", which is 20 false your present evidence or that statement? A. Neither of them are false.

Q. Will you reconcile the two statements then. You said definitely it was a matter of resentment between the two of you that his mother never gave him anything? A. What do you mean when you say reconcile?

Q. You have stated on oath yesterday and today that Mr. Alles received nothing from his mother. You have set out in the affidavit that he received considerable sums of money from time to time from his mother. You say neither of those statements is false. Tell me how they can both 30 be true? No answer.

Q. Can you tell me which of the statements is false? A. They are not false.

Q. Are both true? A. I think so.

Q. Then will you tell me if both statements are true how you reconcile the two statements? No answer.

Q. Do you say that the statements you made today do not contradict the statements made in the affidavit? A. They do not.

Q. I am giving you the chance of telling me how you say they are not contradictory of each other? A. She gave him once or twice 40 Rs. 50 for his birthday I think.

Q. So that when you said he never on any occasion got anything from his mother it is not correct? A. That was a gift and not a help.

(To Court :

Q. Occasionally she used to give him sums like Rs. 50 ? A. Rs. 15).

Now read that affidavit again please, it says he has received substantial sums of money from time to time do you call Rs. 15 a substantial sum ?

A. No, I don't.

Q. You were there suggesting that he received help from his mother ?

A. When this affidavit was sworn he had received substantial sums to pay off his debts and I had heard about that.

Q. You gave evidence also in the alimony inquiry (evidence read) ?

10 " Who gave your proctor the figure of Rs. 750 ? I do not know " is what you have stated. Did Mr. Jayewardena draw on his imagination ? A. No.

Q. You said you swore an affidavit which Mr. Jayewardena got someone else to draft ? A. I must have given those instructions. But my husband always gave me the impression he was earning because he always used to go out of town.

Q. Your position throughout this whole case has been that he was earning practically nothing, you told us he could not even redeem his car which had been given for repairs ? A. Yes he could not take it back.

20 Q. You said he could not because he had no money ? A. If I said it yesterday it is perfectly right. He could not take the car and it was sold in the garage.

Q. He did not have the money to take it back and it was sold that was because he did not have very much money ? A. Yes.

Q. When you went up to Jaffna to stay he asked you to stay at the Krishnaratne's ? A. I was invited by them to stay there.

Q. You also gave the reason of expense ? A. Yes it was expensive to stay at the resthouse.

30 Q. You have stated " His mother gave him whenever he wanted any money " is that correct ? A. If I said it is correct.

Q. And if you say today something different is that also correct ? No answer.

(To Court :

My husband always gave me the impression whenever I asked him for house expenses and things like that he had money because he always found the money and he used to give it. He used to go to Avisawella, Chilaw, Galle and other places.)

40 Q. You said yesterday that his mother never gave him any money today you said that she gave him occasionally a present of about Rs. 15 but not help. In your affidavit you said that she gave him substantial sums from time to time and your explanation for that is that she has now paid his debts. If you said that his mother gave him money whenever he wanted is that correct ? A. I do not think his mother would have refused if he went.

No. 84
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

Q. That is your reason for saying that his mother gave him money why then did you swear today that it was a point of resentment that his mother did not give? A. Even in his letter of the 9th he has stated that his mother never gave him a cent.

Q. And you were aware of that fact that he had made that statement to his mother? A. Only after I heard the letter being read.

Q. You do not know of any occasion when his mother gave him money as a help when he wanted? A. I have no recollection.

Q. You have no knowledge at all of any assistance that his mother gave him when he wanted money? A. No. 10

Q. Will you not admit then that the statement that his mother gave him money whenever he wanted is not true? A. It is not correct.

Q. You made these statements when you were trying to draw a large sum of money from him? A. I did not ask for a large sum.

Q. What was the sum you asked for? A. Rs. 200 a month.

Q. Did you say this "Whenever he wanted money he used to go to her. I did not tell him about the salary". You did not tell the proctor about the salary? A. I do not think I told him that his salary was Rs. 750.

Q. Then you said "I was in bed when it was signed. He did not read it over to me. I knew what I was signing". Who was the Justice of the Peace before whom you signed the affidavit? A. Mr. Albert Peris. 20

Q. Did he come to your bedside? A. Yes.

Q. Was he well-known to you? A. We knew him. I did not know him very well.

Q. You have told us that his mother had not shown any desire to come between husband and wife until April or May, 1941? A. Yes.

Q. And you and your husband used to visit Laurentum quite often? A. Yes. 30

Q. The further suggestion you are making is that your husband acted at the instigation of his mother because he was in financial difficulties? A. That is obvious because he is now with his mother.

Q. You are suggesting are you that he has gone over to his mother and deserted you at his mother's instigation because he was in financial difficulties? A. Yes.

Q. Will you tell me when he first began to be in financial difficulties? A. I cannot give the definite date.

Q. On the basis of your knowledge? A. I think when he asked me to sign a note for him. 40

Q. When did you first sign a note for him? A. It was for a Miss Daniel.

Q. Eda Daniel? A. Yes.

Q. When was that, was it before November, 1939? A. May be.
 (Shown a document) will this help you to refresh your memory? A. Yes.

Q. Now look at the date? A. 5th November.

Q. That is a receipt for money paid on the promissory note so that the note must have been before that date 5-11-39? A. Yes.

Q. How much was the note for? A. Rs. 200 I think.

Q. You do not remember now the amount of the note? A. No.

Q. You knew it when you signed it? A. That was the only note
 10 the amount of which I knew and I think it was Rs. 200.

Q. You knew at the time of the note the amount that was taken?
 A. Yes.

(To Court :

He never told me why he wanted it he only asked me to sign the note for him.)

Q. You signed several other notes? A. Before he left the house.

Q. When? A. In December I think.

Q. One was Miss Daniel's note and one in December you never signed any other notes? A. Two in December, 1941, I think.

20 Q. Any others? A. I cannot remember any others.

Q. Are you prepared to swear that you signed no other notes? A. I am not prepared to swear but if you refresh my memory I will say.

Q. Did you sign any in October, 1941? A. Yes before he went away I signed two notes.

Q. The first one was for how much? A. I did not see the amount because it was covered with a blotting paper.

Q. Now do you know the fact that your husband was entitled to some money lying in a partition case subject to a *fidei commissum*? A. I know that he had some money which he had given to his sister.

80 Q. You know that his grandfather had left property subject to a *fidei commissum*, that is Britannia Buildings in the Fort? A. I do not know all that he only said that he was sorry he gave that money to his sister.

Q. Your father Paul de Costa was also one of the *fidei commissarii*?
 A. I do not know that.

Q. You did not know that your father had any interest in the Britannia Buildings? A. I do not know about my father's affairs.

Q. You knew that in 1939 Mr. Alles signed away his interest in that money in order to enable that money to be drawn for the purpose of
 40 erecting a house for his sister? A. I do not know when he signed it, he said he gave the money to build a house.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

Q. Was that when he was in financial difficulties—borrowing money from Miss Daniel—he was giving away an interest in a fairly large sum of money to his sister? A. Because he was forced to.

Q. What do you mean by saying he was forced to? A. He told me it was by his father or something like that

Q. His father was dead at that time? A. He may have written a will and he said he was forced to give it away.

Q. On 21-6-39 was his father alive? A. No. He said that it was in his father's last will that all this money had to go to the daughter to erect a house. 10

Q. In May, 1941, definitely Mr. Alles was very badly off? A. He never said he was badly off, whenever I used to ask him whether he was in debt heavily, he used to say nothing of the kind nothing more than Rs. 5,000 or Rs. 6,000.

Q. You knew about the debts that had been paid off? A. I heard.

Q. From what you know about the payment of the debts is it safe for you to say that he was badly off by May, 1941. You knew that he began to borrow from 1939? A. Yes.

Q. And by December, 1941, his debts were more than Rs. 10,000? 20
A. I did not know that.

Q. You know that now? A. Yes.

Q. By May, 1941, a good amount of those debts had been incurred do you know now? A. Yes now. I know.

Q. When did his mother come and speak to you. You know the time his mother came and spoke to you about the gossip, it was about that time? A. Yes.

Q. And when his mother came and spoke to you about the gossip although he was badly in debt at the time he wrote that nasty letter to his mother P38? A. Yes. 30

Q. You said that between the 5th and 19th Father O'Halaran came to see your husband? A. Yes. Somewhere in December.

Q. He came there at the instance of his mother? A. Yes that is how he put it to us.

Q. According to you he more or less told Father O'Halaran that that was nobody else's business? A. Yes.

Q. His debts were then quite as heavy were they? A. Must have been.

Q. But when Father O'Halaran came he was not prepared to discuss the matter with him? A. Yes. 40

(Shown P2). Your story today is that you went to the Police dance because he went with the Namasivayams? A. Yes.

Q. You actually did protest to him against this ? A. Yes a number of times.

Q. You realised by the time you got this letter P2 that your husband had taken a fairly serious step ? A. Yes.

Q. So much so that you went and consulted your lawyers ? A. I had to consult somebody and I consulted them.

Q. As a matter of fact you said that this letter 1D5 was the draft of your counsel and you had put the whole position before him and shown him all the letters ? A. Yes.

10 Q. You told your lawyers your whole grievance ? A. Yes.

Q. You told them what all the trouble was and you showed them all these letters you have now produced ? A. Yes.

Q. You kept nothing back ? A. No.

(To Court :

Q. You told them all the facts about the Police dance, about the Carnival and about what happened on the night of the Medical dance ? A. Yes.)

Q. You told them that really it was not a question of your going about with Dr. Samahin but if anybody had any cause to complain it 20 was you ?

(At this stage Mr. Ameresekere interposes and says that communications between lawyers and clients are privileged I think the question comes within the purview of sec. 129, the plaintiff has offered herself as a witness and I think the questions are necessary in order to explain her evidence. I allow the question to be put.)

Q. You told them that he had definitely promised not to go to the Police dance and told you that he must break his promise to go with the Namasivayams ? A. Yes.

Q. You told them that he had first arranged to go to the medical 30 dance with you and subsequently he had left you and gone with the Namasivayams ? A. No he did not go at all to that dance.

Q. According to you the grievance was entirely yours why is it you made no suggestion at all about any friendship with the Namasivayams which led to this rupture ?

(Mr. Ameresekere again interposes. I inform you that the questions seem to be quite proper and when an English-speaking witness is in the box it is highly irregular for counsel to interpose except on good grounds. I hold that the question can be put and I ask Mr. Ameresekere to resume his seat.)

40 A. My lawyers wrote this letter for me.

Q. Did you read it over before you signed it ? A. If I write a thing I always read it over.

Q. Did you read 1D5 ? A. I read it.

No. 84
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

Q. As a matter of fact you were not able to read the draft so you had left blanks in your letter and filled them up later? A. You may be quite right, it was in somebody's handwriting which I could not follow.

Q. You posted it did you? A. No my lawyers posted it.

Q. Did you having read it suggest to them look here I have also got a grievance to set out and suggest your grievance about Mrs. Namasi-vayam? A. My grievance was that my husband was very fond of her. I make no allegation that he committed adultery.

Q. You do not make it even now? A. No.

(To Court :

10

Q. He was making a perfectly unfounded charge against you why then did you not in your reply take credit for the charges you had against him? A. I did not want to do that because my only grievance was that he was very fond of her and after my telling him that Namasi-vayam had insulted me he still persisted in going with them.)

Q. You told us a little while ago how you found out that he had gone about with the Namasi-vayams that he said he was going for dinner and that some lawyers were coming to give him a lift and when the car came you ran and saw the number of the car? A. Yes.

Q. Did you then think he was meeting the Namasi-vayams clandes-20
tinely? A. What do you mean by clandestinely?

(To Court :

Clandestine is where a husband dallies with a woman and when the wife asks him says he was delayed in the office. A. Then it is quite right.)

Q. It is a fact then that he was trying to suppress things from you which made you suspicious? A. He can still come and give some explanation I would not think unkindly of that I would not give an ugly meaning to that.

(To Court :

30

Q. He had said that he had left you and to justify that he was giving certain reasons in the letter why did not in your reply say far from my giving him cause you had a complaint against him because of this? A. I am not making the allegation that he committed adultery. I only say he was very fond of her.)

Q. Why do you say that are you seeking to justify anything? A. Because he always left me alone at home and said he was going to see counsel or

Q. And naturally you thought there was something wrong about it? A. When I questioned him he said "I would not give up their friendship." 40

Q. You also said that the first row that took place in your married life was that day in November when Dr. Wickremesooriya came? A. Yes.

Q. That any unpleasantness or row subsequent to that was over his going out with the Namaivayams? A. Yes.

Q. The next row was that? A. Yes.

Q. Any other rows that took place therefore were all connected with the Namasivayams? A. No rows only arguments.

Q. Any arguments between you and your husband were all over the Namasivayams? A. Yes. I found he was going about with the Namasivayams and from the time Namasivayam insulted me in August....

Q. Then from August onwards there have been arguments about his visits to the Namasivayams and apart from those arguments and the garlic incident there were no other rows? A. No.

10 Q. When he in his letter referred to continued outbursts and quarrels why did you not say the only argument we have had has been about your going to the Namasivayams? A. There was no use of my telling him what he knew all about.

You admit in that letter that yours had been a very peaceful and happy house up to a point of time? A. Yes.

Q. That is your position? A. Yes.

Q. Until certainly his return from Jaffna in 1941 yours was a very happy house? A. Yes very.

Q. An extremely happy home life? A. Yes.

20 Q. He was a very affectionate husband and dutiful father? A. Even after he returned from Jaffna he was that.

Q. He was a husband who carried his loyalty to his wife to the extent of writing a very nasty letter to his mother in defence of his wife? A. Yes.

Q. You told us when you 'phoned him you were crying over the telephone? A. Yes.

Q. And he heard you crying and he asked you what it was and you told him what the trouble was and he promptly wrote to his mother? A. After reading my letter.

30 Q. And he wrote that letter to a mother who had complete control of the entire estate and who had full power to disinherit him altogether? A. Obviously he did not care about that when he wrote it.

Q. So that the fact of that letter shows that he stood by you? A. Yes.

Q. At the risk of losing everything from the estate of his father and mother? A. Yes I think he thought his mother was to blame.

Q. He went the length of telling you not to take the baby to Laurentum? A. Yes because his mother had not paid him a New Year's visit, he said don't send the child.

40 Q. You told us his mother came and spoke to you about the gossip is it correct that your father and brother had ever made any remarks about the association with Dr. Samahin? A. Yes.

Q. As a matter of fact Merita stayed with you when she came for her holidays from India? A. Yes.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

(To Court :

Q. Was Merita engaged ? A. No.

Q. Up to now ? A. No.)

Q. Merita stayed with you during her holidays whenever she came and when she came for good also up to a certain point of time ? A. Yes.

Q. Continuously ? A. Yes.

Q. When did she go to India ? A. In 1936.

Q. And came down for her holiday every year ? A. She comes in December and goes back in February.

Q. What was she doing in 1941 in Ceylon ? She had come down for 10 good ? From 1936 onwards during every holiday she had been with you ? A. Yes.

Q. When did she come back for good ? A. The Christmas holiday of 1939.

Q. From 1939 throughout the whole of 1940 and earlier part of 1941 she was with you ? A. Yes.

(To Court :

Q. Why did she go to Kandana ? A. Because my father was staying alone and he could not look after the place he wanted my sister to come there. 20

Q. After she returned from India why did she not go to Kandana ? A. My father was staying with me.

Q. Your father left in November, 1940 ? A. Yes.

Q. Then why did Merita stay on ? A. Because my father then was staying on the estate with a cousin and it was a lonely life there.)

Q. Can you give any reason why in August, 1941, after Mr. Alles returned Merita was taken away to Kandana ? A. Because by that time my father had moved to Kandana.

Q. He moved in November, 1940 ? A. He stayed on the estate with my cousin then. 30

Q. Which estate ? A. Somewhere in Waga.

Q. What is the name of the estate ? A. Munamala Estate.

Q. That estate is now sold to Mr. R. L. Pereira. It was sold in 1940 ? A. I do not know.

(To Court :

Q. Can you explain why Merita who was allowed to remain in Colombo after your father left in 1940 was taken away on the 26th August ? A. Because he wanted someone to look after his house at Kandana and he also took my aunt.

Q. To look after him till the 26th August ? A. But my cousin 40 was all the time with him.

Q. Cousin being ? A. Mr. J. W. Alles.)

(Counsel reads the letter.)

Q. Then you refer also to the visit of Father O'Halaran, now Father O'Halaran first spoke to you? A. His first visit was an ordinary visit. He had the names of those who had not attended a meeting and he came to find out why we had not come and he spoke nothing about my husband or myself on that occasion.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

Q. Subsequently he called and spoke to you in the first instance?
A. Yes to me and he asked me to call my husband and spoke to him.

Q. He spoke to you in the first instance? A. Because I was outside when he came naturally he spoke to me in the first instance.

Q. You say he had been sent by Mrs. Alles? A. That is what he said. He made me understand that.

Q. And the subject of his conversation was the association with Dr. Samahin? A. No.

Q. "You remember the visit of Father O'Halaran he talked to you about our association with Dr. Samahin." That is the subject of his conversation was this association with Dr. Samahin? A. He said a certain doctor.

Q. He spoke to you about it and then he asked you to call your husband? A. Yes.

Q. Your suggestion is that your mother had got at him? A. Yes and his brother Reggie.

Q. He was desperate at that time as his debts were very much. And did you know that when you wrote this letter the amount of his debts? A. No.

Q. At the time you wrote this letter what did you think was the amount of his debts? A. About Rs. 6,000 or Rs. 7,000.

Q. Do you say then they had used that lever to get hold of him?
A. Yes.

Q. "We have had no quarrels and outbursts but they have always been temporary and no sooner they took place we made up". So you refer to a few outbursts which you say were the only ones that took place?
A. Yes that was one at the Police dance and the garlic incident.

Q. You admit that he was always very fond of the child? A. Yes I think so.

Q. The letters he had written to you from Jaffna also indicate that?
No answer.

Q. Now you received two copies of Mr. Alles' letter? A. Yes.

Q. One by registered post and one by express post? A. I received one by express or registered post between 10-30 and 11-30 and I received the other in the evening.

Q. Which in the morning and which in the evening? A. The registered one came first.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

(Shown 2D5). Is that the registered letter? *A.* This is express and registered.

Q. That came in the morning? *A.* Yes.

Q. Do you know that as Dr. Samahin has told us the post office opens for registration of letters at 10 o'clock? *A.* I do not know.

Q. Dr. Samahin has told us he was aware of that are you prepared to contradict that? *A.* I do not know.

Q. Anyway this came to you after 10-30? *A.* Between 10-30 and 11-30.

Q. Yesterday a suggestion was made here in court about a cheque now I take it instructions to your lawyers are given by you? *A.* Yes quite right.

Q. Is there anyone else who gives instructions? *A.* No.

Q. The suggestion was made yesterday on instructions that a cheque had been issued by Mrs. Alles for Rs. 500 on the 17th of December and had been paid into the account of a Mrs. Babapulle on the 19th December, the suggestion being that that was an inducement for Mr. Babapulle to give evidence—false evidence on the 19th December? *A.* Yes.

Q. Will you tell me on what basis you gave those instructions? *A.* My proctor came and saw me and told me he had got some information and wanted to know he was to carry on and I said yes go ahead. 20

Q. Carry on with what? *A.* Carry on with the information he had got.

Q. You say you knew nothing personally about it? *A.* No.

Q. You said you did not set out in that letter the fact that quarrels were due to Namasivayams? *A.* Yes.

Q. In your plaint you were filing action for separation on the ground of malicious desertion? *A.* Yes.

Q. You have made no suggestion that the fondness for the Namasivayams' led to his leaving the house? *A.* No.

Q. You do not make that suggestion even now? *A.* No. 30

Q. Now to come to the facts of this case. You remember Dr. Samahin's visit to Bandarawela in April? *A.* Yes on Good Friday.

Q. You heard Dr. Samahin give his evidence, he said he came on Good Friday? *A.* Yes.

Q. You were in court right throughout this case? *A.* Yes.

Q. You heard Miss Ludowyke say that Dr. Samahin was here in Colombo on Maundy Thursday with your husband? *A.* Yes.

Q. And you say that Dr. Samahin came on Good Friday? *A.* Yes.

Q. Were those your original instructions to your lawyers that he came on Good Friday? *A.* Yes right along. 40

Q. You met him on Good Friday morning in the Club and you make no mistake about it? *A.* Yes.

Q. And your original instructions were that he came up on Good Friday? A. Yes.

(Evidence put to witness.)

Q. Dr. Babapulle was cross-examined by your lawyers and question put was "I am instructed that Dr. Samahin was in Bandarawela on Maundy Thursday....."? A. I did not give those instructions. My instructions were that he was there on Good Friday and I still say so, Mr. Gratian may have made a mistake when he put that question.

Q. The position I am putting to you is this in point of fact Dr. Samahin had come on Maundy Thursday morning? A. He did not.

Q. I am putting it to you that your original instructions were that he came on Maundy Thursday? A. Certainly not.

Q. I am putting it to you that you have changed your story now in view of what Dr. Samahin swore that he came on Good Friday? A. I all throughout said that he was in Bandarawela on Good Friday. You can ask proctor Jayewardene to produce my instructions.

Q. Now to come back to the beginning your story is that generally you and your husband were very happy till the child came to be born? A. Yes right along.

Q. Both you and your husband had been anxious to have a child? A. Yes, I was very anxious.

Q. And so was your husband? A. I cannot answer for him.

Q. You told us yourself that you and your husband had been very happy at the birth of the child? A. Yes.

Q. After the child was born I take it your married life was even happier than before? A. There was no difference.

Q. The baby made no difference? A. No we were happy with the child.

Q. And in 1940 things were going on like that? A. Yes.

Q. It was in 1940 that you first became close friends of Dr. Samahin? A. Yes.

Q. You will admit that prior to that Dr. Samahin had never visited your house? A. Yes.

Q. Not prior to October, 1940? A. Yes.

Q. And prior to the middle of 1940 at least you had never danced with him? A. I had not met him; had I met him I may have danced with him.

Q. The fact is that prior to that you had not danced with him? A. Yes.

(To Court :

Q. Is he a good dancer? A. Fair dancer.

Q. Anything very extraordinary? A. No,

No. 34
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

Q. Who is the better dancer he or your husband? A. My husband does not dance very much because of his leg.

Q. Who is the better dancer—he or Namasivayam? I think Namasivayam dances better than the doctor.

Q. In spite of his hand? A. His hand has nothing to do with it.

Q. What was the attraction that made Samahin a friend of you and your husband? A. There was no special attraction. He was always very nice to us and he took us out and so on.

Q. He is a man who does not belong to your community at all?

A. Yes.

10

Q. He is a Malay? A. Yes.

Q. What was the affinity that existed between your husband and you on one side and this Malay doctor whose wife would not call on you?

A. She never went out.

Q. There was no special attraction? A. No.

Q. Was it drink? A. Card playing was the link.

Q. Your husband was a keen card player? A. Yes.

Q. You? A. I learnt to play cards after I married my husband —poker and things like that.)

Q. By December, 1940, Dr. Samahin had become a very close friend 20 of the family? A. Yes.

Q. So close, he was one of the few invited to the midnight supper after midnight mass and he was one of the very few invited to see the New Year in, you had also been his guest at a dinner to Dr. A. M. de Silva?

A. Yes.

Q. When your husband left for Jaffna you said that he accompanied you to the station? Yes.

Q. I am putting it to you that 1st defendant's evidence has been that he went in Dr. Marcelline Costa's car? A. Certainly not. His luggage went in his car. He had a large cabin trunk suitcase and another 30 small attache case.

Q. Dr. Marcelline Costa's car is bigger than Samahin's? A. May be.

Q. Mr. Alles has said that he went to the station in that car on that day? A. It is not true.

Q. Anyhow you were so friendly that your husband told the doctor to look after the two of you? A. Yes.

Q. That we take it is merely he wanted him to look after the two of you and to see to anything you needed? A. Yes.

(To Court :

40

Q. Look after what needs? A. If we wanted the car to go shopping to give us the car if we were going out visiting. And he being a doctor if we wanted any medical aid to ask him.

Q. Hadn't you another car available to you—your father's? A. No. 34
My husband had always told me do not ask your father for his car. Plaintiff's
Further
Evidence

Q. Dr. Marcelline de Costa's car? A. He said do not ask your
father or my uncle. Merle Alles
Cross-

Q. Pius de Silva's car? He is your father's partner? A. I do
not know whether he is my father's partner in his business. —continued.

Q. His car was available to you? A. When I want to go and
buy currystuffs I use his car because I did not want to ask the doctor to
take me in his car to the Pettah.

10 Q. He has got a driver? A. I take quite a long time when I go
to buy the stores for the month and so I ask his car although the doctor
was always willing to give his.

Q. So when you wanted to buy currystuffs and things like that you
used that car? You ring him up and get his car? A. No, I had to
give him two or three days' notice.

Q. When you returned from Jaffna whose car did you use? A.
I had asked Dr. Marcelline de Costa to send his car. My child and sister
were staying with him and I asked him to send the car.

Q. Was there any other car that you could have used? A. I
20 had no other car.

Q. How did you get his car, did you ring him up or write to him?
A. Before I left when I sent the child and Merita there I told him to
send the car for me on the day I was expected at Colombo.

Q. Dr. Samahin was expected to look after you to supply any little
want you needed and take you out when you wanted to buy anything?
What else did this looking after embrace? A. He took us about when
he wanted to go out. He was an owner-driver.

Q. Taking you out for dances? A. Yes, parties and dances and
to call on any friends.

30 Q. Is it correct that during this period you went out for dances once
a week? A. On Sunday nights. Then I went to the carnival.

Q. While your husband was in Jaffna you went to the dance every
Sunday night? A. Yes.

Q. And then you went to the carnival? A. Yes.

Q. You went to the Harbour Lights Carnival? A. No. I was ill
and I could not go. I went once.

Q. That was while your husband was in Jaffna? A. Yes.

Q. You went with the doctor? A. Yes and some friends. I
went about 6 o'clock and returned.

40 Q. For the London Calling Carnival? A. Yes, I went.

Q. How many times? A. Two or three times.

Q. With Dr. Samahin and others? A. Yes.

Q. Not with him alone? A. Never alone.

No. 84
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

Q. You know Mr. & Mrs. Krishnaratne very well? A. Yes.

Q. You were their guests in Jaffna? A. Yes, on two occasions.

Q. You remember Krishnaratne coming there he and his daughter came from Ratnapura to see the Harbour Lights Carnival and he met you? A. I have no recollection.

Q. You remember Mr. Krishnaratne when he came down with his daughter coming and asking you to accompany him and his daughter to the carnival? A. No.

Q. Did you meet them at the carnival any day when you were out with Dr. Samahin? A. I cannot remember it at all. 10

Q. Cannot remember refusing to go with Krishnaratne and his daughter and having gone later on with Dr. Samahin? A. No.

Q. To dances once a week—these carnivals, where else did you go with Dr. Samahin? A. I went with him to see one Mr. Perera with my father when he was giving a show at some place near my father's place.

Q. Was that when your husband was in Jaffna? A. Yes. I went with Dr. Samahin, my father and sister.

(To Court :

Q. What was Perera doing there? A. He had a country residence there. 20

Q. Not to Angoda? A. No.)

Q. And on that occasion the child was left at Marcelline Costa's? A. No the child was at home.

Q. What time did you return? A. We went for lunch and came at 6 p.m.

Q. You have never been to C. O. Perera's for any function with Dr. Samahin? A. I do not think so.

Q. Party or anything? A. No.

Q. Any evening function? A. No.

Q. Anything else you can remember? Any other goings out with him? A. To the Ludowykes. 30

Q. Races with Dr. Samahin and your father? A. No, not till the August races came along.

Q. You know the date of Mrs. C. O. Perera's birthday? A. 7th October.

Q. Anniversary of her wedding? A. I cannot remember the date.

Q. Do you remember attending any wedding anniversary of Dr. C. O. Perera? A. No.

Q. These are some of the places you went to with Dr. Samahin and others and you say you were always accompanied when you went with him by somebody else? A. Always with my sister. 40

Q. The only occasion you can remember when you went out with him alone was the occasion when you went to the Silver Wings Carnival?
 A. Yes, and the Police dance.

Q. Now your husband went away on the 1st February?
 A. Yes.

Q. The servants who were in the house then were Alice?
 she was the cookie right along.
 A. Yes.

Q. And you remember the woman Joslin who went to Bandarawela?
 A. Yes.

Q. Who came a little time before the visit to Bandarawela?
 10 Yes. A.

Q. About 10 days she says are you prepared to contradict that?
 A. Yes, I do. About 2 or 3 days before, because she came and saw me about 10 days before I left and asked me if I would take her on again. She was a very poor woman and I wanted an ayah because my ayah was going on and she came about 2 or 3 days before I left.

Q. You heard Alice's evidence?
 A. Yes, I was in Court and heard every one's evidence.

Q. You remember the time after your husband returned from Jaffna in August and December. Alice was the cookie even then?
 20 was my cookie till my husband left the house. A. She

Q. During that time your husband used to take no lunch to the Courts?
 A. In the latter part he used to take a very big breakfast and he said he required no lunch in the Courts.

Q. Where did Alice sleep when your husband was away in Jaffna?
 A. In the pantry. The pantry is on the same side as the guest's room facing the house on the left hand side.

Q. It is the next room to the one in which it is said the 2nd defendant used to stay?
 A. Yes.

Q. In the pantry or in the dining room?
 A. In the pantry.

Q. You said you went to these dances with Dr. Samahin and others when your husband was away once a week and would return about mid-night?
 80 A. Yes.

Q. Who opened the door to you?
 A. Jane.

Q. Where did she sleep?
 A. In my sister's bedroom.

Q. You heard Alice give evidence?
 A. I heard every bit of it.

Q. You heard her say where she slept?
 A. Yes.

Q. Did you tell your lawyers it was not Alice who opened the door but Jane?
 A. Yes.

Q. Did you tell them that Alice slept in the pantry?
 A. Yes.

Q. When did Jane come into your employment?
 40 returned from Bandarawela. A. After I

Q. Now will you tell me before you came to Bandarawela who opened the door?
 A. The ayah.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

Q. Who was that? Different names at different times. A. Mary or one Agnes or another.

Q. Do you say that all the evidence that Alice has given is false?

A. Absolutely false.

Q. Did you ever call her by the name of Ella? A. Never. That is because my little daughter always called her Ella because she could not pronounce Alice it is being put on me.

Q. You never called her Ella? A. I give no pet names to my servants.

Q. Alice was a good servant? A. I at no stage said she was bad.

Q. Please answer my question? A. Yes, quite alright. 10

Q. No fault to find, quite faithful while she worked with you? A. Yes, quite alright.

Q. You were so pleased with her that you added something to a certificate written out by your father—shown certificate 1D7? A. To every servant who left my service this identical certificate was copied out and given. I added this because they had commented telling I had said nothing about her being a good servant.

Q. Look at this document the first part of it is in your father's writing? A. Yes, I asked him to write it. I had never written a certificate and I asked him to help me to write one and he wrote this. 20 Previously it was my husband who wrote them for me.

Q. When your father wrote it out you who had never written a certificate before felt that you should add something more? A. That is because when I wrote this and gave it to her she said say that I am a good servant and you can recommend me and I asked my father how to put it down and I wrote it.

Q. Miss Sansoni has stayed at your place? They are good friends of yours? A. Yes.

Q. As a matter of fact Miss Sansoni is a good tennis player? And your brother is also a good tennis player in the first class? A. I do not know anything about this. I know that Miss Sansoni plays tennis and my brother plays tennis. I do not know whether they are first class or second class.

Q. Do you know that Miss Sansoni has been Ceylon's tennis champion for a number of years? A. I know but whether she is in first class form I do not know.

Q. She is the Ceylon champion anyhow? A. Yes.

Q. Has your brother taken part in tournaments with any success in Europe or in England? A. He has played in England.

Q. They have played together at the Lawn Club? A. Yes, he is a member of the Lawn Club. 40

Q. Miss Sansoni and Noel are members of the Lawn Club? A. Yes.

Q. Mr. Waldo Sansoni and your father are very good friends? *A.* Yes. No. 34
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

Q. And their children and you? *A.* Yes.

Q. In fact Mrs. Sansoni contracted her last illness in your house?
A. No. She came ill and on doctor's advice was operated on.

Q. Miss Sansoni has been staying at your place when your husband was away? *A.* Yes.

Q. Has she been to your place in Kandana? *A.* Yes, since 31st December.

10 Q. To see you? *A.* There are two Miss Sansonis.

Q. Either of them? *A.* Yes, they come and see us.

Q. You have been to see them at Rajagiriya? *A.* Yes.

Q. Did you see Alice there when you were at Rajagiriya? *A.* No recollection of seeing her there.

Q. When did Miss Sansoni come to Kandana to see you? From the time I went up there.

Q. After this case was instituted and before? *A.* Yes.

Q. Mr. Sansoni and the Misses Sansoni have come to your place and you have visited the Sansonis at Rajagiriya very often? *A.* Not very
20 often two or three times.

Q. After this action and before? *A.* About three times I think altogether.

Q. After this action was instituted as much as before? *A.* Altogether three times.

Q. How many times after this case was filed? *A.* I went there for Christmas this year.

Q. How many times did you meet after this action was filed? *A.* They came to Kandana to see me three or four times and I have been to see them only at Christmas.

80 Q. Have you discussed this case with them? *A.* No.

Q. No discussion whatever? *A.* No.

Q. Have you been to Rajagiriya at any time after the air raid? *A.* No.

Q. You never became aware of the fact that one of the servants of this material period was employed at the Sansonis? *A.* No.

(To Court :

Q. You heard Alice's sworn evidence? *A.* Yes.)

Q. You deny that you have attempted to keep Alice away from Court with the assistance of one of the Sansonis? *A.* Certainly not.
40 I never spoke about it to any member of the family.

Q. Nor to your father? *A.* No.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

Q. Do you not even now know that she was employed at Sansonis at any time? A. I heard her saying she was employed there.

Q. When you went to the Sansonis this Christmas did you not discuss this case at all? A. No.

Q. Did you not then discuss about Alice being one of your servants? A. No.

Q. Did you not even say that that woman had the audacity to bring your name into Court? A. No. I did not talk about it at all.

Q. Did you not say that she had the brass to say that Miss Sansoni had spoken to her something about the case? A. No. 10

Q. What is the harm about talking about it? A. There is no harm. It did not strike me at that time and I did not talk about it.

Q. You heard Alice's evidence that the refrigerator is in the dining room? A. Yes.

Q. Is it correct that sometimes she has to come into the house to speak to you about anything that may be necessary? A. If she wants to see me yes. She does not come right in but to the pantry door and she would tell one of the servants—male servants—that I am wanted.

(To Court :

Q. She is dirty in the kitchen and she comes to the pantry door and 20 sends for you? A. Yes. She shouts out to me if I am about the place.

Q. Coming to the pantry door means coming to the dining room? A. To the dining room door.

Q. And from there she could see through the house? A. Yes, to the hall.)

Q. She has told us that she had seen Dr. Samahin coming out of that room by day? Is that false? A. Yes.

Q. And she has told us that by night she has opened the door to you and Dr. Samahin several times? A. It is not true.

Q. That Dr. Samahin spent the night in the guest room? A. 30 That is not true.

Q. When she says that she saw you go into your room comb your hair pull the wash plug and walk across to the room occupied by Dr. Samahin is that false? A. That is false.

Q. Can you suggest any reason why she is giving false evidence? A. She has seen my husband since I left.

Q. That he has given her money to make her give this evidence? A. I do not know. He must have asked her to tell these things.

Q. She is the woman to whom you had shown kindness why should she do that? A. I cannot explain all servants are like that so long as 40 they are in the house they are quite nice. After they leave they are like that. That has been my experience.

Q. Why should they implicate you? A. The master is having a case and he must have said look here I am having a big case you have been with me, I have been nice to you, I have not interfered with you and things like that, and the lady scolds you and finds fault.

Q. Joslin, you never scolded her? A. Yes. If anything was wrong I scolded with the same to all my servants.

Q. When she went away you gave her the bridal clothes for her daughter? A. Yes she was a very poor woman.

Q. That is nothing at all to you but a great thing to her? A. Yes.

10 (To Court :

Q. You say these servants have no gratitude at all once they leave? A. Yes. It is like that with them.

Q. Pabilis, do you know how he came to leave the house? A. He went away saying his father was ill.

Q. A day or two before that did your husband slap him for being out when he was supposed to be sleeping in the verandah? A. I heard him say so but that was the first time I heard about it.

Q. You never heard of that before? A. No.

Signed. R. F. DIAS.

20 Further hearing on Monday.

25-1-43.

Counsel as before.

MERLE ALLES, sworn.

Q. You told the Court on Friday last that Alice slept in the pantry A. Yes.

Q. And that you had given those instructions to your lawyers? A. Yes.

Q. That you had told them that from the beginning? A. Yes.

30 A. Q. And that she could know nothing as she slept in the pantry? A. Yes.

(To Court :

Q. When you saw 1st defendant's list of witnesses you knew that your husband was going to call a lot of servants to say what happened in the house? A. Yes.)

Q. My suggestion to you is that in the first instance you instructed your lawyers that Alice slept in the kitchen so as to make it impossible for her to know anything that happened in the night? A. No I did not give those instructions.

40 Q. Alice gave a good reason for sleeping in the house that the women slept inside and the men servants outside? A. That was my instructions to them.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

(To Court :

Q. Is that not the usual practice even in your father's house ? A. Always.)

Q. Alice is supported in that by Pabilis ? A. Yes.

Q. It was only then that you realised that Alice should be brought into the house and you try to make it that she slept in the pantry ? A. No. Right from the beginning I told my lawyers that she slept in the pantry.

Q. Alice was cross-examined by Mr. Ameresekere on your behalf " You as cook woman in 1940 would always sleep in the 10 kitchen after your work ". The suggestion I make is this do you say like Mr. Gratiaen this is Mr. Ameresekere's mistake ? A. I do not say it is a mistake.

(To Court :

Q. In spite of your instructions that she slept in the pantry why has Mr. Ameresekere put the question that she slept in the kitchen ? A. He wanted to make sure from her where she actually slept.)

Q. You said you were asked questions about Alice by your lawyers and you said that she slept in the pantry ? A. Yes.

(To Court :

20

I have all along said that she slept in the pantry. I do not suggest that Mr. Ameresekere mistook pantry for kitchen.)

Q. With regard to Pabilis I was asking you about his dismissal and you said you were not aware that your husband slapped him. I put it to you that not only were you aware but you interfered and told him that would do ? A. I knew nothing about it.

Q. To show that these servants were speaking falsehoods you produced an account book of yours ? A. Yes.

(Shown P42.)

Q. In this book you have put down the date on which you paid ? 30 A. Yes it will tally with my monthly account book as well.

Q. The date on the top 8-1-41 is the date on which you made all the payments mentioned there ? A. Yes.

Q. Will you explain to me then why against two of the items you have written paid ? A. Those I had paid in advance.

Q. Those were not payments on that day ? A. No the gardener wanted his salary in advance.

Q. What is the date of payment ? A. I cannot say because I just wrote it down in this book that I paid the gardener and had bought the firewood earlier. Those two items were not paid on the 8th but all 40 the others were.

Q. When you paid earlier where did you make a note of it ? A. I did not make a note of it I just say I have paid.

Q. Why have you ticked off some of those items? A. When they come and take the money I tick that off.

(Shown P40B). To turn to June against the dhoby you have written Rs. 10 and ticked it off? A. Yes. I paid the June wages on the 16th June.

Q. What is that Rs. 2 on the side? A. Because I had deducted Rs. 2. I have put paid here against two items in this page those were advances to the ayah.

(To Court :

10 Q. These servants come at various times when they want 50 cents and 25 cents and sums like that? A. Yes.

Q. And you write it there or on slips of paper? A. If they ask for sums like 50 and 25 cents I do not take them back but when they ask for an advance I write it in a pocket book.)

Q. The story of Pabilis that on the day your father came round you were with Samahin in that room is false? A. Yes.

Q. Is it possible to go from that side of the house to the other without being seen? A. If I ran right through my father could have seen at once.

20 (To Court :

There is a shoe-flower hedge at the back of the house. When I was there it was about my height. Even if I went behind the shoe-flower hedge I had to go between the two spaces there.)

I heard Joslin say that she used to take the baby in the pram for a walk morning and evening and that she goes sometimes by that room and sometimes the other way.

Q. And when sometimes the baby was restive in the pram you looked out of the window? A. No.

30 Q. When the baby was put into the pram she always created a disturbance to get out and walk? A. I do not think so.

Q. And she says you used to then peep through the window of the spare room? A. I never did that.)

Q. It is also in evidence that when Dr. Samahin came there you used to ask her to take the child to the back of the house? A. No. That is false I never asked her to take my child to the back.

Q. What Alice has said that there has been occasions when the doctor walked with you to the kitchen quarters holding your hand? A. That is false. I have never walked with him to the kitchen.

(To Court :

40 Q. Did Merita sometimes go and sit in the garden reading a book? A. No. She reads in the house but not in the garden.

Q. Another thing is that Merita had told them that because of the goings on in that house her chances of marriage were being jeopardised? A. It is all imagination. Merita will be coming to give evidence.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

Q. Pabilis has said that one of the visitors to the house was a kaffir gentleman is that correct? A. I do not know of any kaffir gentleman.

Q. Did any negro come? A. I know a Cuban gentleman came. He brought us to the Galle Face once. He comes to the house quite often with his fiancée.

Q. Kapiri Mahatmaya would not apply to him? A. I could not call him that.

Q. He has negroid features? A. No. Not to me.

Q. His complexion was dark? A. Yes.

Q. Hair curly? A. Yes.

10

Q. And negroid lips? A. Yes.

Q. He used to come with his fiancée and before he got engaged?
A. He never came then he always came with her.

Q. You are perfectly sure about that? A. Yes.

Q. Who is that lady of what community? A. Burgher lady.

Q. You were very friendly with Dr. & Mrs. Rutnam? A. My father is a very good friend of the doctor and Mrs. Rutnam. I have been to Dr. Rutnam's very often practically every Tuesday and Friday to see my child.

Q. When there was a dispute about seeing the child the place arranged was that place? A. Yes my husband suggested it.

Q. You heard Pabilis say that in January, 1942, you were there some time after your husband had left and that Dr. Samahin came over there after they had gone to the pictures and took you out? A. No, because I was never in Colombo in January, 1942, at night.

Mrs. Rutnam has a telephone. The number is 9928. I have used that telephone very often.

Q. Did you put any trunk calls to Dambulla? A. Yes, two.

Q. To whom? A. Dr. Samahin.

Q. When? A. I could not tell the date.

80

Q. The trunk calls were on 7-5 two six minute calls? A. That may be.

Q. And on the 1st June there was a call. There were four calls?
A. I do not admit I made four calls. I cannot say the date when I made the calls. I made two calls and I did not get the doctor on both occasions so I left a message which another man took down.

Q. You heard Dr. Samahin's evidence on the point that he never got a call but received the message? A. Yes.

Q. Two of those calls are six-minute calls? A. I said I made two calls and I gave a message to the gentleman who took it down. That was because I wanted some information. I said I wanted to speak to the doctor to get some particulars.

40

Q. At that date this action had been filed? A. Yes, that is why I wanted some particulars.

Q. You had your lawyers dealing with the case? A. Yes I had given instructions to them.

Q. And Dr. Samahin has his lawyers? A. Yes.

Q. You wanted to get in touch with him and discuss certain things with him? A. I wanted to ask him certain particulars about the case.

(To Court :

At that time I had filed my action against my husband. My action
10 was filed on 2-4-42. My first trunk call was on 7-5-42.

Q. At that date 2nd defendant had not filed answer? A. I cannot say.

Q. At that date Dr. Samahin was not in this case you were suing for malicious desertion and it was only after your husband filed his answer and disclosed Samahin that he came into the case? A. Yes.

Q. What was there then for you to telephone to Dr. Samahin, your case is you are totally innocent and that your husband had basely deserted you and when he charged you with adultery it came as a bolt from the blue? A. Yes.

20 Q. What was the necessity then to ring up the doctor? A. Because I wanted to find out some dates when my sister was in hospital and so on.

Q. Would not a letter have been sufficient? A. I did not think of a letter at that time. As I was in Colombo I thought I could get him on the telephone.)

Q. Mr. Alles' answer was filed on 21-7? A. May be.

Q. Your action is a simple action for malicious desertion and you heard of the charge of adultery when the answer was filed on 21-7? A. No in his letter to me when he left the house he has connected my name
30 with Dr. Samahin's.

Q. He makes no charge there of adultery? A. He speaks of outbursts as a result of intimacy with the doctor which made him leave the house.

Q. He did not suggest anything about adultery? A. I knew when he coupled my name with the doctor's that he was going to bring the doctor into the case.

(Counsel reads P2.)

Q. There he has merely set out the justification for his leaving the house and that he is going to sue for a divorce? A. Yes.

40 Q. Your lawyers sent a reply to that letter? A. Yes.

Q. You say the first time you realised a charge of adultery was being made when answer was filed? A. I suspected when I got the letter.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

Q. You were not satisfied to allow your lawyers to communicate with Dr. Samahin? A. I thought I would ask him.

(To Court :

Q. Why did you not leave it to your lawyers to fish out the information, you had your lawyers? A. I did not think there was anything wrong when I 'phoned up the doctor.)

Q. In spite of that fact that you suspected that your husband would make a charge of adultery against you? A. Yes.

Q. Is it correct that the doctor came to see the child in hospital?
A. No. Never. 10

Q. You gave certain details of the history of your menstrual period from the time you were a child? A. Yes.

Q. You grew up at 11 and from that time onwards your menstrual history has been very peculiar? A. Yes.

Q. You said there were several peculiarities, it came in clots, time 9 to 10 days, irregular in the cycle? A. Yes.

Q. Very unusual in the normal case? A. I do not know that. That it is unusual in other women.

Q. You still do not know it is unusual for a woman to have her menstrual period in cycles like that? A. No. 20

Q. You heard the evidence of Dr. Attygalle that he had never heard of such a thing in his life. You will admit that he is more experienced in these matters? A. I could not say.

Q. You know he is a gynæcologist and has made a special study.....?
A. I know he is a gynæcologist. I heard his qualifications.

Q. You heard Dr. Frank Gunasekere if a woman menstruates in this manner it would be a curiosity? A. Did he.

Q. He did. A. I cannot remember his saying that.

Q. Are you prepared to deny he said so? A. I do not know.

Q. You never knew when it would come? A. No I had no fixed 30 date.

Q. Sometimes the cycle became shorter and sometimes longer without any regularity? A. Yes.

Q. You were taken to a doctor you said? A. Yes a lady doctor.

Q. That is because something was wrong? A. Yes, my mother took me, I was quite young and did not know.

Q. That was because of this peculiarity of yours? A. No.

Q. In spite of that you did not know that there was anything wrong?
A. No I did not know that there was anything wrong, my mother took me. 40

Q. After you married you did not have a child for a considerable period of time? A. Yes.

Q. Did you associate that with this peculiarity of yours in menstruation? A. Yes I thought there was something wrong with me.

Q. So you realised that these peculiarities were unusual? A. I could not tell you that I thought that at that time, that the peculiarity was in the menses but I thought there was something wrong with me.

Q. You realised that that was not the normal thing? A. Yes.

Q. And I take it you must have told your husband that there was this wrong and suggest seeing a doctor? A. No I did not tell my husband I consulted Dr. C. I. de Silva. He spoke to my husband.

10 Q. So that you knew when your husband was giving evidence that he was aware of this peculiarity of yours in menstruation? A. He knew all about it.

Q. Throughout this case you knew that certain doctors were being called to give evidence and you saw the list of witnesses and Dr. Thiagarajah has been assisting your lawyers on that side of the case? A. I know that he was advising my counsel as to what questions he should put.

Q. He has been retained by you and paid a fee? A. Yes.

Q. Is he coming as a witness? He is on my list.

Q. Dr. Thiagarajah assisted them in getting ready for the cross-
20 examination of the witnesses? A. Yes.

Q. He has been advising your lawyers on the medical aspects of the case? A. Yes.

Q. And he was in court throughout while they gave evidence? A. Yes.

Q. You must have been asked these questions at the outset about the regularity of your menstruation? A. Yes.

Q. And before the case started you gave instructions with regard to this irregularity? A. Yes.

Q. And you also told your lawyers that your husband was aware of
30 this irregularity? A. Yes I think I did.

Q. After your marriage when you saw Dr. Wickremasooriya the first thing you told him was about the menstrual history of yours? A. Yes.

Q. That is what you associated with your not having a child? A. I thought that I had something wrong with my womb because friends used to say perhaps there is something wrong with your womb.

Q. But you felt that the cause was this menstrual history of yours? A. Yes.

Q. And the first thing you told Dr. Wickremasooriya was about this peculiar menstrual history? A. Yes I told him.

40 Q. And he made notes of it? A. I do not know whether he made notes.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

(To Court :

Q. We are now talking of the first time before the double operation you told the doctor about your irregular menstrual history? A. Yes.

Q. About the clots, the length of the period and that it came once in 24 hours 28 hours and so on? A. Yes.

Q. As a matter of fact Dr. Wickremesooriya examined you of course on that day? A. Yes.

Q. Apart from what he could find by his examination all that you could tell him to assist him was this menstrual history? A. Yes. That is all I could tell him. 10

Q. Dr. Wickremesooriya when he gave his evidence stated that so far as he remembered there was nothing abnormal in your menstrual history—evidence read? A. May be.

Q. You had told your lawyers right at the beginning that you told Dr. Wickremesooriya about it at the start and you heard his evidence? A. I thought he must have come across women who menstruated irregularly.

Q. You heard him also say that this did not create a big impression on his mind? A. Yes.

Q. Did you not then tell your lawyers.....? A. My irregular-20 ity did not create anything in his mind because he may have come across many women like myself.

Q. Answer my question? A. I did not tell them.

(To Court :

I was in Court listening to the evidence.)

Q. You realised at that time that the whole of your case as to who was the father of the child was dependent on this question of whether your menstrual history was regular or irregular?

(I disallow that question. I do not think that is a fair question to put. Her case is now in the hands of her lawyers.) 30

Q. The fact remains that you did not suggest or remind your lawyers at that time that you had informed Dr. Wickremesooriya? A. No.

Q. You heard the doctor give evidence. You have today in your evidence fixed the date of your last menstrual period as the first date as 12th July? A. Yes.

Q. Is that correct? A. Yes.

Q. And you are buttressing yourself up with the fact that Merita had to help you on that occasion and that is how you fix the date? A. I fix the date definitely because that was the day after Dr. F. Gunasekera ceased to see me. 40

Q. You also stated to Court that it lasted five to six days? A. Yes.

Q. Dr. Wickremesooriya that you gave him the date 11th to 14th July?
A. Yes I did.

Q. So the dates you gave him were wrong?
A. When I told Dr. Wickremesooriya the 11th to the 14th I could not tell him on that occasion the exact date.

Q. Now having heard more evidence you are able to give the date as the 12th and that it lasted five to six days?
A. I did not give him the duration of the period I only told him I could not fix the exact date of the period and I told him it was between the 11th and the 14th July.

10 Q. Dr. Wickremesooriya has also told us that on the first occasion he saw you on the 23rd October you were unable to give him the date?
A. I told him 11th August.

Q. You then contradict his evidence—evidence read?
No answer.

Q. Dr. Wickremesooriya was giving evidence with a small card in his hand?
A. Yes.

Q. And that was the card he said on which he made notes of your labour pains?
A. Yes.

Q. Notes of whatever he ascertained at his inquiries?
A. Yes.

Q. So that he was not speaking from memory?
A. No.

20 (Evidence put to witness) “On the first occasion she was not sure of the date.....etc.” Do you challenge that evidence?
A. When I went on 23-10 to see him he had in his card 11th August.

Q. That is not the question, but is that evidence wrong that on 23-10 you could not give him the date of the last menses?
A. I think he is making a mistake, I said definitely 11-8.

Q. You saw further that was written on the card?
A. Yes with a question mark too.

Q. You saw him refer to that card?
A. Yes.

30 Q. Did you not tell your lawyers that he had written 11-8 on the card?
A. Yes I think I drew Mr. Ameresekere’s attention to it.

Q. So that when Dr. Wickremesooriya was making that statement with the date 11-8 written on the card—looking at it?
A. Yes.

Q. The second visit was in November, he came to see you?
A. Yes.

40 Q. The third occasion was on 17-12. He says you came to his bungalow on 17-12 he heard the foetal sounds and that was the first day you mentioned the last menstrual period, that is not correct?
A. No. When I went on 17-12 he told me that he cannot fix anything from the date 11-8 because it does not tally with the examination. You must give the exact date in July and I could not tell him exactly the 12th, it was between the 11th and 14th is what I said.

Q. Dr. Wickremesooriya has said that you mentioned 11-7 on 17-12?
A. I said between 11th and the 14th.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

Q. Was that the first time you mentioned it to him? A. That was the first time.

Q. You said that on 17-12 and not before? A. No, because I had given the 11th August before. In October I gave him the date 11-8 and he said that does not tally with his examination. The first date I gave him was 11-8 and thereafter I saw him on two occasions, on the third occasion he said that 11-8 could not tally with his examination.

Q. Then you gave him the 11-7? A. Yes between the 11th and 14th I said.

Q. You shifted then the 11-7 to the 12-7 because of Frank Guna-10 sekere's evidence that he saw you on the 11th? A. No.

(To Court :

Q. On 17-12 you had had disagreements with your husband?
A. No.

Q. At the Police dance? A. That was patched up.

Q. Silver Wings Carnival. Both these were before 17-12? A. Yes.

Q. On both those occasions your husband had asked you why you went with Dr. Samahin? A. No, he never asked me.)

Q. The date of the last period was a matter which you could fix as 20 absolute certainty the 12th? A. Yes, because I was ill at the time with renal colic)

Q. You had Merita's assistance and between the two of you you had no difficulty in fixing the date 11-7? A. I was confused about the date and I came home and looked at the prescription and then I knew it was the 11th.

Q. When Dr. Wickremesooriya was in the box you told your lawyers that the menstruation started after Dr. Gunasekere ceased to see you?
A. Yes.

Q. On that day that Dr. Wickremesooriya questioned you, you went 30 back and looked at the prescription? A. On the 23rd not on that date.

Q. This is his evidence "On the first occasion she came to see you she could not give you the last menstrual period? I have a query in my notes because she was confused about it etc." That is referring to the 23rd 10? A. I gave him 11th August and he put a question mark before me.

Q. You say that Dr. Wickremesooriya looking at the card in which he had taken the date 11-8 is giving this evidence that he asked you and you were not able to give the date? A. He may have made a mistake. 40

Q. With the card before him? A. He may look at the card and yet not say it.

(Shown evidence).

Q. There is no reference there even to the fact that you had given a date? A. I have definitely given him the date.

Q. Why will you tell me you did not tell your lawyers look here he has got that date on his card? A. It was not for me to interrupt at that time.

Q. Why did you not tell the proctor? A. I was telling my proctor many things and he said leave it alone Mr. Ameresekere knows about it.

Q. Was there a consultation with your lawyers that night? A. I did not go.

Q. Did you not have a consultation that evening? A. Not when the doctors were giving evidence.

Q. Did you not at any time suggest after you went out of the court that Dr. Wickremesooriya is making a mistake? A. I told Mr. Ameresekere he has got the date and he said well if it is there it is alright.

Q. The date mentioned by Dr. Wickremesooriya throughout was 11th to 14th? A. Yes. I heard him say that.

Q. You realise the importance of the fact of Dr. Gunasekere having seen you on 9-10. You realise that his evidence would have a bearing on the question of whether you were speaking the truth or not? A. I did not know that.

(To Court :

Q. You wear the usual napkin when you have your menses that means a girdle suspended the bandage? A. Yes.

Q. That part of the abdomen which Dr. Gunasekere looked at the girdle would be there? A. No, further down.

If he felt it he would have seen it.

Q. If he was examining for appendicitis four inches south west of the navel he would see the girdle? A. Unless he felt it he would not have known.

Q. He would have seen it? A. I cannot say that).

Q. You told the court in examination in chief when Dr. Wickremesooriya examined you in the house on 22-11 your husband was by the bed side and present throughout the examination? A. Yes almost by the bed side.

(To Court :

Q. Are you suggesting that the Doctor examined the lady in the presence of the husband? A. Yes.

Dr. Wickremesooriya has examined me a number of times before my husband.

Q. You mean with your body exposed? A. Only my stomach and with a sheet on the lower part).

No. 34
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

Q. Your husband's case was that after examining you Dr. Wickremesooriya came out to the verandah and told him something which gave him a shock that was his first inkling of anything being wrong? A. His evidence was that. But he walked out of the room with the doctor.

He was by my bedside when I was being examined.

Q. You heard your husband give evidence "Where were you when he examined the patient? A. In the front verandah."

Q. Why did not your lawyers challenge that statement? A. I do not know.

Q. The same position was put to Dr. Wickremesooriya by me and 10 there was another chance of challenging it? A. While the doctor examined he was there and then he went out and he took the doctor out to wash his hands and went out to the verandah. He was not by my bedside all the time.

Q. With regard to Dr. Gunasekere's evidence when he examined you on 9th July the pain was chiefly from the back? A. I could not say where the pain was. I had pain. I cannot say where the exact pain was, it was an acute pain.

Q. When you fell ill you got an acute pain and you asked your sister to phone up Dr. Gunasekere? A. I merely said get me medical aid 20 I am in terrible pain.

Q. Dr. Samahin never attended on you for this? A. He has never attended on us for anything.

Q. Any special reason? A. We had our family doctor.

Q. When you asked Merita to telephone for medical aid was Dr. Samahin in the house? A. No.

Q. There was no special reason why he did not attend on you? A. We did not ask him.

Q. You wanted medical aid, he is a doctor? A. My sister got the doctor. 30

Q. He came after the phoning and before Dr. Gunasekere turn up? A. Dr. Gunasekere was phoned first and afterwards I think she phoned up Dr. Samahin also.

Q. So he did not come casually? A. I do not think so.

Q. He has told us that he came casually and he found you ill and walked into the room? A. I think my sister phoned him up.

Q. You said on the last date that when Dr. Samahin was asked to look after you one of the things he had to do was to render any medical aid? A. Yes but I did not think of Dr. Samahin, my pain was so great I only asked for medical aid. 40

Q. Can you say why having phoned up the family doctor she phoned up Dr. Samahin? A. Because we were given in charge of Dr. Samahin and she thought it best to let him know also.

Q. Dr. Samahin was in the room when Dr. Gunasekere turned up?
 A. Dr. Samahin came about 15 minutes before Dr. Gunasekere.

Q. And he was in the room with you? A. My sister brought him in.

Q. So he came into the room as a doctor? A. Yes. And he said all of a sudden you have fallen ill what is the matter. I said I was in terrible pain and then Merita told him that Dr. Gunasekere also had been phoned for and a few minutes after we heard Dr. Gunasekere coming and Merita went to him and brought him into the room.

10 (Relevant portion of Dr. Samahin's evidence read).

Q. What you now say is Dr. Samahin was entitled to be present?
 A. Yes because he was phoned for.

Q. It is not correct that both the doctors came into the room together? A. No, Dr. Samahin came in first. My sister brought him in and a few minutes after that Dr. Gunasekere came and my sister went up and brought him into the room and she left the room.

Q. You heard Dr. Gunasekere give evidence he did not say he was taken in by Merita? A. He did not go into all that detail.

Q. You knew that the suggestion was being definitely made at the
 20 time that there was something improper in Dr. Samahin being alone with you when Dr. Gunasekere came? A. I do not think I realised that there was anything improper at that time.

(To Court :

Q. Do you realise that your husband was making a point of the fact that Dr. Samahin was in this room when Dr. Gunasekere was examining?

A. He is a medical man himself Dr. Samahin).

Q. Did you realise that a point was being made against you with regard to that? A. Yes.

(Evidence put to witness).

80 That is quite right.

Q. You have told the court that there was an ayah in the room?
 A. Yes.

There were two ayahs in the room but I did not care who was in the room I was in great pain to remember all that. There must have been an ayah or two. There was an ayah in the room because they were changing my bed linen and things like that. I cannot remember whether there was an ayah there when I was being examined.

Q. You heard Dr. Gunasekere say that there were three possibilities when he seriously considered? A. Yes.

40 Q. You know that Dr. Samahin did venture to disagree with Dr. Gunasekere? A. Yes I heard it.

Q. My suggestion to you is that you were on that date pregnant?
 A. Certainly not.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

Q. And that Dr. Samahin was also aware of the fact? A. No.

Q. I put it to you further that on 17-12 when you gave the dates that you did to Dr. Wickremesooriya you did so after consultation with Dr. Samahin? A. No I did not consult him at any stage.

Q. So far as the first baby was concerned you were expecting that child for the full 9 calendar months? A. Yes.

Q. The child was born in June and you had conceived in September? A. Yes.

Q. Fairly early in your first pregnancy you were liable to hæmmorrhage? A. Five months of hæmmorrhage. 10

Q. The hæmmorrhage started from the very first month of pregnancy? A. Yes.

Q. So much so that you were practically laid up in bed throughout that period? A. Yes right through.

Q. That was on doctor's advice? A. Yes.

Q. Now to come back to the facts of the case on 1-2 your husband went to Jaffna? A. Yes.

Q. And he was away on that occasion and he next met you on 27-2? A. Yes.

Q. After your visit to Jaffna the next meeting was a few minutes 20 at Bandarawela? A. Yes.

Q. The next was on the 17th April? A. Yes.

Q. You went away on the 18th? A. Yes in the afternoon.

Q. From the 18th afternoon you were away at Bandarawela and Nuwara Eliya and returned on the 20th? A. Yes.

Q. Your husband left for Jaffna while you were away? A. Yes.

Q. From the date he went to Jaffna till 9th August your husband was continuously in Jaffna? A. Yes.

Q. And you were in Colombo? A. Yes.

Q. No possibility of your meeting? A. Unless I went up, which 30 I did not do. There was no contact.

Q. On the night he came down reaching Colombo on the morning of the 9th and he left on the 10th? A. Yes.

Q. And he came back on the 21st or 22nd August? A. Yes.

Q. Your husband had left you and your sister in charge of Dr. Samahin you told us and when you went to certain parties and dances and beyond the fact that you were friends, Dr. Samahin never spent the day or night in your house? A. No.

Q. You next met Dr. Samahin in Bandarawela? A. Yes.

Q. On Good Friday morning? A. Yes. 40

Q. That day later in the day you met your husband? A. Yes at lunch time, between 12 and 1. He was also buying vegetables.

Q. And it came as a surprise, you have said, to see him in Bandara-wela? A. Yes, because I expected him to wire or write that he was coming because he said if he gets a car he would come.

Q. Dr. Samahin had met you at the club earlier? A. Yes.

Q. As soon as he saw you he asked you where is Stanney? A. Yes. I said you have come from Colombo you ought to know.

Q. What did he say then? A. He said then he left before me by car.

Q. You heard Mr. Alles' evidence he says having met and talked to you he went back and had lunch at Beliuloya? A. Yes.

Q. You have told us Dr. Samahin invited him to lunch at the hotel? A. Yes he refused because he had a previous engagement to go to Welimade.

Q. He was not clad for the lunch you said? A. Yes he had a khaki shorts and a shirt, long socks and shoes.

Q. Why could he not go in that costume? A. My husband thinks quite a lot when he is not dressed and another thing is he said he had already arranged to lunch at Welimade.

Q. Also another reason was you could not ask him to the Solomons'? A. Yes.

Q. You also said you did not ask Dr. Samahin to the Solomons'? A. Yes, we asked him to come along with us and then it was just lunch time and Mrs. Solomons asked him to have some lunch.

Q. How did you go that day to Solomons'? A. In Perumal's car. Perumal dropped us there and he was going to Haputale.

Q. Dr. Samahin was at the Outschoorn's? A. Yes.

Q. That is just opposite the club? A. Yes.

Q. You told us Solomons' house is 1½ miles away on some other road? A. Yes.

Q. The car dropped Dr. Samahin and you and Perumal went to Haputale to see his wife? A. Yes having dropped us.

Q. If Mrs. Solomons had not invited Dr. Samahin for lunch he would have had to walk 1½ miles back? A. If he was not staying for lunch he was going to Muttetugamas.

Q. So that was considered? A. No, we did not consider it. I knew he was going there.

Q. Dr. Samahin according to you having come from the station changed his clothes and came to the club? A. Yes we met him there.

Q. From that time you were in his company till lunch? A. Yes.

Q. Dr. Samahin in that time had received no invitation from the Muttetugamas for lunch? A. I do not know.

Q. Did he meet any of the Muttetugamas? A. They were all in the club.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

Q. Did you hear any invitation to lunch? A. No.

Q. When you went to Solomons' with Dr. Samahin did he inform you or mention the fact that he had an invitation for lunch at the Muttetugamas? A. No.

Muttetugamas live just behind Solomons' and when Mrs. Solomons asked him to have lunch he said he is going just behind for it and she said now that you are here have some lunch please.

Q. So that he was disappointing Muttetugamas in staying for lunch?

A. Not disappointing at all.

Q. It was not a special engagement then? A. He just said that. 10

(To Court :

Q. You knew that Mrs. Outschoorn would be having lunch ready for him there also? A. I did not know).

Q. You were not inviting Dr. Samahin? A. No, having not invited my husband I was not inviting him.

Q. Can you say why Dr. Samahin should say you invited him?

A. No reason why he should say so.

(Evidence read).

I do not know why he said that. I know that Mrs. Solomons asked him I did not ask him. 20

Q. Dr. Samahin has gone further and said that he was under the impression that you would have had to pay for that lunch? A. I suppose he must have thought so because in a guests house everything we eat and drink has to be paid for.

(Evidence put to witness).

I did not invite him and I did not pay for the lunch.

Q. You met your husband with Mr. Weeresinghe? A. Yes.

Q. And I take it you asked him how he happened to be there with Mr. Weeresinghe? A. I just asked him when he left Colombo. I did not ask him for any particulars about his visits. 30

Q. Did you ask him did you start this morning from Colombo?

A. I was very surprised to see him.

(To Court :

Q. On this day you were a good wife, you had last met him in February in Jaffna and here on 11-4 you met him suddenly why were you not interested in what he was doing? A. Because when I saw him I had so many things to speak to him about that I did not ask him when he left Colombo or things like that.

Q. Then he told you about this story of going to Welimade? A. No when the doctor invited him for lunch he said Thank you very much 40 Sambo I am going to Welimade for lunch.

Q. You do not know even now that your husband had been to the Krishnaratne's and had come from there to Bandarawela? A. No.

Q. Can you suggest any reason why your husband should tell you falsely that he was going to Welimade? A. Because he was making a marriage between Mr. Weeresinghe and Miss Krishnaratne. Perhaps that is why he did not want to say he was going to Belluloya. My husband never told me that it was Mr. Namasivayam who told me that.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

Q. When did he tell you that?

(Mr. E. B. Wickremanayake says this is hearsay evidence I agree, but the witness has blurted it out).

A. After I returned from Nuwara Eliya after my holiday. Just 10 before the row.

Q. That was long before this case? A. Yes.

Q. How did it affect you if he said he was going to arrange that marriage? A. He did not.

Q. What was his motive? A. I do not know why he lied to me. Mr. Namasivayam told me not to ask my husband about it and I never asked him.

Q. You went that day and lunched at the Solomons' and spent the afternoon at the Muttetugamas? A. Yes.

Q. With Dr. Samahin? A. Yes with my sister and some others.

20 Q. That evening you went to Diyatalawa? A. Yes.

Q. Major Fonseka is in Ceylon? A. In Diyatalawa.

Q. Who else did you meet there? A. A big crowd.

Q. Did you go to the Mess? A. Yes, the Officers' Mess.

Q. Major Fonseka's car fetched you to Diyatalawa and brought you back? A. Yes.

Q. Major Fonseka would be in a position to say at what time you came and at what time you left? A. Yes.

Q. He is not on your list? A. I do not know.

Q. On Saturday morning 12th you went to the races? A. Yes.

30 Q. You returned to Bandarawela in the evening? A. At about 4-30.

Q. You were dropped at the club you and Dr. Samahin? A. Yes. He dropped us at the club as my sister was there.

Q. Stanley Fernando was staying in your boarding house and he drove off? A. Yes.

Q. Then you say you took some clothes you had left at Victor Dias'? A. I took them in the morning.

Q. Dr. Samahin came to pick you up according to you that night to take you to the dance? A. Yes Perumal and the doctor.

40 Q. And your evidence is that you spent that night after the dance at the Jayewickreme's? A. My sister and I,

No. 34
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

Q. Mrs. Jayewickreme will be able to testify to that fact that you and your sister spent that night at her house? A. Yes.

Q. On your return from the dance? A. Yes.

Q. At what time did you go to the Jayewickreme's? A. At 5-30.

Q. At what time did you leave the dance? A. 12 o'clock.

Q. From mid-night till what time were you at Jayewickremas?
A. Till 8-30 when we went for service on Easter Sunday.

Q. Only you two remained? A. Yes.

Q. Hortense? A. I had told Mrs. Solomons to look after.

Q. Were the Jayewickreme's up when you went? A. I think 10
Jayewickreme was in bed, only Mrs. Jayewickreme and the servants were there.

(To Court :

Q. For how long had you not seen Hortense that day? A. I saw her in the morning and the following morning after Church).

Q. The child was left with the ayah at Solomons'? A. Yes and Merita the whole day. I met Merita at 4-30 in the club).

Q. You slept in the same room? A. Yes my sister and I used the big room.

Q. How many beds? A. We had one big bed, a double bed and 20 there was another bed also.

Q. Then there were two beds in that room? A. Yes. One double bed and a small bed my sister and I used the double bed.

Q. What was the adjoining room used for that night? A. That was also prepared and ready we did not use it.

Q. Was that the dressing room? A. There was a bed and wash hand stand all ready.

Q. A bed or couch? A. Bed.

(To Court :

30

Q. Where did you two ladies on the 12th April perform your ablutions? A. We went to the bath room and lavatory. We washed our faces in the big room, there was a wash hand stand in the big room.

Q. You had been to that house previously? A. On those two occasions.

Q. Any way on the 18th April you were perfectly familiar with the lay out of the house? A. Except those two rooms I did not go to any other room).

Q. You said there was a double bed on which you slept? A.
Yes.

40

Q. And a vacant bed also? A. Yes.

Q. On the 18th April when you slept there what bed did you use?
 A. The small bed.

Q. The double bed was also there? A. Yes.

Q. So that at that date the double bed was in the room unoccupied?
 A. Yes.

(To Court :

Q. Was the double bed made up? A. I cannot remember).

Q. Mr. Errol Jayewickreme gave evidence with regard to this household furniture and he said there were two beds in the big room which had
 10 been made up on receipt of the telegram? A. Yes, the big bed was covered with a counterpane. I slept on the small bed.

(Evidence put to witness).

Q. There were two mattresses on the small bed. He took away one and left one for you? A. It was all made up.

Q. The double bed was also completely made up? A. There was a counterpane.

Q. The small bed was made up with the one mattress for you?
 A. Yes.

Q. And there was a wash hand stand in the room? A. No that
 20 was taken into the small room.

(To Court :

Q. Did Mrs. Jayewickreme know that you were using her bath room to wash? A. Yes.

Q. And you used it? A. Yes. Before I retired that night I went to that bath room.

Q. If she is called she will support you? A. Yes.)

Q. The point I am making is this you and Merita had slept there and you knew the rooms that between that room and the next there was an intercommunicating door? A. Yes.

80 (To Court :

The bolt was on my side. It was a bolt.

Q. Did you push that bolt in the night? A. It was locked and I left it alone.

Q. You knew that the room next to it was occupied by a man?
 A. Yes.

Q. Did you satisfy yourself that that bolt was shot? A. Yes I did the bolt on the top was up and the bolt in the middle was up.

Q. The door could not be opened from the other side? A. No).

Q. My question is this on the 12th April you had spent the night
 40 there after the dance and you and Merita had used that big room which you slept in on the 18th and on that occasion you used the bath room attached to F and K on the plan? A. Yes.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

Q. So that you knew to get to the bath room you had to enter through the other room? A. But not if somebody was occupying it.

Q. You knew that the entrance was through the smaller room?
A. Yes.

Q. You knew also that these were the only two rooms available for guests?
A. Yes.

Q. You knew that on the other side were two smaller rooms which Mrs. Jayewickreme used as her bed room and dressing room?
A. Yes.

Q. When you went up to Bandarawela on the 18th you say on the 17th it was arranged that you should stay at the Jayewickremes'?
A. 10
Yes.

Q. According to you a telegram was sent?
A. Yes by Mr. Alles. I do not know who signed it.

Q. You saw it being written out?
A. I was about close by I did not see it being written.

Q. The two who were expected were you and Miss Ludowyke?
A. Yes.

Q. The arrangements were made at the party on the 17th?
A. Yes.

Q. It was put to Mr. Alles that he welcomed this arrangement because it allowed him an opportunity of taking Mrs. Namasivayam to dinner and the pictures?
A. Yes. 20

Q. Did your husband arrange this party for you in order that he may go out with Mrs. Namasivayam?
A. I do not say that he arranged it.

Q. The child was there?
A. Yes on his instructions the child was sent there.

Q. Now you said the other day that there was no talk of the child at all at the party?
A. Yes.

Q. No discussion about it?
A. No. 30

Q. None of you considered about the child?
A. I was thinking of taking the child with me to Bandarawela.

Q. You knew your trip was to go to Bandarawela and on the following day to Nuwara Eliya and you were taking the child also?
A. I was not taking the child to Nuwara Eliya but to Solomons'.

Q. To be brought again on the 20th?
A. Yes. Hortense at that date was 3 years old.

Q. And you told us that it was only when you were in bed that you mentioned to him that you were taking the child back and he said let the child be at the Namasivayams'?
A. He said it would be very tiring for the child to go and be brought back, let her go to the Namasivayams'. 40

Q. Do you suggest that he deliberately wanted the child sent there that he might have the opportunity of going there? A. Even if I had not sent the child there he would go there. The child made no difference at all.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

Q. Are you making any point of the fact that he mentioned about it while you were in bed and not at the party? A. I am not making any point it did not concern anybody else about our child. It was between the two of us.

Q. At that time you had no reason to feel that he was paying unnecessary attention to Mrs. Namasivayam? A. All along I had that feeling. I only objected after he insulted me and I protested and my husband took no notice.

Q. Right away from the beginning you felt he was paying too much attention to her? A. Yes from the time we were engaged.

Q. But you lived with him for about 8 years and there were no quarrels about Mrs. Namasivayam? A. There was no quarrel then when he went about with her it is only after Namasivayam insulted me that I said even after that man insulting me you cannot give up that friendship.

Q. So your objection to going out to the dance was because he went with Mr. Namasivayam? A. Yes because he had insulted me.

Q. On the 17th when you left Colombo that was the arrangement and the evidence is that after Miss Ludowyke met Merita at Bandarawela that the arrangements were altered? A. Yes.

Q. You heard the evidence of Joslin? A. Yes.

Q. That you and Miss Ludowyke and Dr. Samahin came up to the house? A. That is false. My idea in going there was to ask Merita not to come to the station because I had told her to meet me at the station.

Q. So you went to Solomons' house and you gave a shout? A. Yes, for Merita and she came down to the car with a boy with a lantern. I walked up with her.

Q. You had gone there for the reason you wanted to tell her that? A. Yes and I wanted to see the others also I wanted to see Mrs. Solomons'.

Q. And Miss Ludowyke walked with you? A. Yes. The three of us walked together.

Q. No suit case was taken? A. Nothing.

Q. It is not correct that the arrangement that you were going to spend the night at Jayewickremes' with Miss Ludowyke was altered before in the car? A. No.

Q. Dr. Samahin has told us that? A. I have no recollection of that.

Q. You are not prepared to deny that? A. I have no recollection.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

Q. Could there have been such a discussion in the car between you and Miss Ludowyke? A. I cannot recollect.

Q. The change of intention was only after Merita met Miss Ludowyke? A. Yes.

Q. So that the discussion in the car could not have taken place? A. No.

Q. On the 17th when you came down to Colombo you were very anxious to be with your husband on his birthday? A. Yes.

Q. So much so that although you were badly off financially you insisted on coming on second class tickets? A. Yes. 10

Q. You did not have enough money to bring the whole party down? A. Yes.

Q. Have you always spent your husband's birthday with him? A. Up to last year I think.

Q. In 1939 Dr. and Mrs. C. O. Perera were at Bandarawela and you were spending a holiday with them there and your husband was in Colombo for his birthday? A. So he says but he was with us at Bandarawela.

Q. On that occasion all you did was to put through a trunk call from Broughams Bandarawela to Colombo? A. No he was not in Colombo for his birthday because Dr. C. O. Perera celebrated it. 20

Q. And you also gave as a reason that he was inviting a number of ladies to the birthday? A. Gentlemen and ladies.

Q. That day you say he told you on the 11th that he was having a large crowd and wished you must also come? A. Yes.

Q. You told him you would come only if you got a lift? A. Yes. Otherwise by train.

Q. Has that been your position all along? A. Yes.

Q. He was quite agreeable? A. Yes.

Q. Why then did you send a telegram on the 16th that you were coming down? A. I sent a telegram. 30

Q. And he sent you a telegram that unless you were coming down with the whole party there was no point in coming down? A. No, he said don't come.

Q. In spite of it you came? A. It was too late I got the telegram at the station just as the train left. It was sent by Mrs. Solomons, to the train.

Q. I put it to you that you arranged with Dr. Samahin while at Nuwara Eliya to come down to meet him here? A. It was not my intention at all and I had not even suggested it to him.

Q. Did you come down that day without any discussion with Dr. Samahin? A. Yes. 40

Q. But you knew he would be probably there? A. I did not expect to see him.

Q. He was one of your friends and he might be there? A. Yes he was a friend.

Q. Is it the fact that you put through a trunk call to Dr. Samahin on the morning of the 16th? A. No, I did not.

Q. Did you send a letter down by Dr. Samahin to your husband when the doctor returned from Bandarawela? A. No.

Q. Mr. Alles has told us that on the 15th morning when he returned from work he found a letter which had been brought down by Dr. Samahin? A. I sent no such letter.

10 Q. With regard to the Bandarawela incident Merita wanted Miss Ludowyke to stay there? A. Yes.

Q. Why did not the three of you then stay in the boarding house? A. Because it would have been very uncomfortable.

Q. Although you had two rooms? A. They were very tiny rooms.

Q. Yes but in your situation was it not possible to rough it out? A. No.

Q. Not even at a pinch. If you had no where else to go to? A. We would not have made arrangements to go at all.

20 (To Court :

Q. Why could not one sleep on a mattress on the floor? A. Cold.

Q. How is it more cold on a mattress on the floor? A. Because it is a cement floor).

Q. Are you suggesting it was utterly impossible for three people to share those beds? A. Yes, small beds. One would have had to sleep between two beds and have been up the whole night.

Q. Did you ask Mrs. Solomons whether any arrangements could be made for one person more? A. I did not ask because I knew she was 30 full up.

Q. Did you ask whether she had any spare bed to be brought into this room? A. No.

(To Court :

Q. You were away for 24 hours how did you know that Mrs. Solomons may not have had a spare room by a guest leaving? A. No one was leaving because I knew that every body had booked up to the 15th May. I knew she had no spare beds and all her beds were occupied.

(To Court :

40 Q. Before going to Jayewickreme's why did you not ask Mrs. Solomons whether she could suggest an alternative? A. Never struck me).

Q. Your room was the big room? A. Yes.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

Q. Big enough for another bed? A. No just room enough to walk about between the toilet table and wardrobe, etc.

Q. Miss Ludowyke said that it was a huge room? A. That is her conception of a huge room.

Q. You are certain no other bed could have been put in there?
A. No.

(To Court :

Q. So you were putting yourself to a lot of inconvenience on this night as a result of this arrangement between Merita and Miss Ludowyke?

A. It was comfortable at Jayewickremes I was not being inconvenienced. 10

Q. It was more convenient for three people to sleep in a room than for you to go to Jayewickreme's and stay in a strange room? A. Well I had stayed there. It was a greater inconvenience to have slept in that room.

Q. You were going to round off your stay at Bandarawela and come away for good? A. Yes.

Q. So you got to the Solomons' at what time? A. Between 8 and 8-30.

Q. After a long journey? A. Yes.

(To Court :

20

Q. What was the great necessity for Merita and Miss Ludowyke to sleep together that night? A. They are very friendly and they had met after a long time and wanted to be together.

Q. You had made arrangements in Colombo with the acquiescence of Miss Ludowyke's parents that you and Miss Ludowyke were going to sleep at the Jayewickreme's? A. Yes.

Q. As a matter of fact only on the understanding that Miss Ludowyke stayed with you that her parents allowed her to go? A. Yes.

Q. Was it not on the undertaking that you were going to sleep in close proximity that her parents allowed her to go? A. No I did 30 not make such a promise.

Q. Did you say that the Ludowykes were quite reluctant to allow their daughter to go? A. Because they did not know the Jayewickremes very well that is why.

Q. They were willing to let her go only because you said you would look after her? A. Yes.

(To Court :

Q. Because you were going to chaperone her? A. Yes. I left her in charge of Mrs. Solomons it was quite safe).

Q. Next morning you went and sent your things to the station? 40
A. Yes.

Q. And rather than be put to the inconvenience of three of you sleeping in that bed you spent the night at Jayawickrema's? A. Yes.

Q. And came back to attend to your work here? A. Yes.

From Victor Dias' to the Jayewickreme's is about as far as from this court to the high road. I did not know that Namasivayam was going to stay at the Dias'.

Jayewickreme's have no phone.

Q. Has Mrs. Solomons a phone? A. No.

Q. You did not think of sending a message? So you did not care where Namasivayam and Sambo stayed? A. Yes.

Q. Why did you not go alone and tell the doctor to mind his own business? A. I was frightened to go alone.

Q. Why did you take him in? A. He came.

Q. Why did you not ask him to go? A. Because I thought all along he was going either to the Hotel or Mrs. Outschoorns.

Q. Why did you not from the Solomons' go direct to Jayewickremes' and get down? A. We were in Namasivayams' car and he said he would drive us to Victor Dias.

Q. How many people in Victor Dias' that day? A. Mr. and Mrs. Dias.

Q. Fairly large house? A. I have never been inside.

(To Court :

Q. You were going to dine at Mrs. Jayewickreme and going to sleep, for certain reasons Miss Ludowyke stayed behind then why did you allow the 2nd defendant to stay there? A. I did not ask him to stay.

Q. Why did you permit him to sleep there that night? A. It was not for me to ask him to go.

Q. Is it true that Mrs. Jayewickreme was angry that the 2nd defendant did not go away? A. She retired early because she was ill.

Q. When you were dining that night did you think the 2nd defendant would go away after dinner? A. Yes.

30 Luncheon Interval.

Signed R. F. DIAS,
District Judge.

25th January, 1943.

MRS. MERLE ALLES :

Q. You heard Errol Jayawickreme's evidence? A. Yes.

Q. You told Mrs. Jayawickreme that you intended to come with Miss Ludowyke? A. Yes.

Q. Those were the two who were expected to stay there the night?
A. Yes.

40 Q. There was no talk whatever of Dr. Samahin staying that night?
A. No.

No 34
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

Q. No request was made for accommodation for Dr. Samahin?
A. No.

(To Court :

Q. He came and stuck? A. Yes.)

Q. After dinner Errol Jayawickrema says you sat and talked for some time? A. We were still at table and Mrs. Jayawickreme gave instructions to get another room prepared. That was after dinner. We were still at table.

Q. After dinner Errol Jayawickrema's evidence is that they waited till about 11 o'clock? A. Yes. 10

Q. Did you not ask the doctor where he was going to stay that night? A. No.

Q. No hint was given to the doctor that it was time for people to go to bed? A. I did not.

Q. You did not ask the doctor casually what arrangements he had made? A. No.

Q. When you went to the Jayawickrema's house you expected to stay there alone? A. Yes.

Q. It was very late when arrangements were made for Dr. Samahin to have a room himself? A. It was after dinner. 20

Q. Errol Jayawickrema says it was very late? A. I can't tell you the time.

Q. Did you not think of asking the doctor where he was going to stay? A. I expected him to leave.

Q. When you found he was not leaving did you not think of asking him where he was going to stay? A. No.

Q. You realised that if Dr. Samahin stayed at that house the only room available to him was the room he occupied? A. Yes, the next room.

Q. Did you realise that that would have been inconvenient for you? 30
A. Why, I had the other room.

Q. There was no inconvenience? A. No.

Q. The bath room arrangements would not afford inconvenience to you? A. I was asked to make use of Mrs. Jayawickrema's bath room when the arrangements were being made.

Q. Whose arrangement was that? A. Mrs. Jayawickrema herself.

Q. Mrs. Jayawickrema after dinner told Errol something and went to bed? A. We were chatting for sometime, she gave Errol Jayawickrema instructions and before going to bed said I could use her bath 40 room.

Q. What was the entrance to her bath room and lavatory? A. Through the dining room.

Q. Not through her room? A. There is another room attached.

(To Court :

Q. To get to the bath room you had to get in through another room and go? A. Yes.

Q. How much later did you people talk after Mrs. Jayawickrema went to bed? A. About half hour).

Q. She had retired about half hour before you were shown to your rooms? A. Yes.

Q. Did you not take the opportunity to tell a person like Dr. Samahin "Look here Dr., this is rather inconvenient what about your arrangements"? A. I could not get a chance of whispering to him.

Q. When Errol Jayawickrema went to make arrangements? A. He did not leave us, the servants were given instructions and they got it done. The only time he left was to take the doctor to his room and me to mine.

(To Court :

Q. Was it necessary to say anything could not a gesture with an eyebrow make him to understand? A. It did not strike me.)

I did not say anything.

Q. Mr. Alles when you left Colombo was under the impression that you and Miss Ludowyke would stay together at the Jayawickremas'? A. Yes.

Q. He expected you and Miss Ludowyke to be in the Jayawickrema's house? A. Yes.

Q. He did not expect you to stay with Dr. Samahin? A. No.

Q. Did you not think there was nothing improper? A. Not at all improper.

Q. Nor even inconvenience? A. No:

Q. It is not correct for anyone to say that Mrs. Jayawickrema was annoyed? A. No.

We had breakfast with her and we had lunch the next day.

Q. You got no impression that Mrs. Jayawickrema was annoyed? A. No.

Q. On the following day you lunched at the Jayawickremas'? A. Yes.

Q. You are definite about that? A. Yes.

Q. Mrs. Jayawickrema sat to lunch? A. Yes, both Errol and Mrs. Jayawickrema sat for lunch.

Q. Mrs. Jayawickrema will bear you out? A. Yes.

Q. You can suggest no reason why Mrs. Jayawickrema should tell anything which is untrue? A. No. The morning before I left I said I was coming for lunch with my sister.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

Q. On the night of the 18th and the dance night were the two nights you slept out of the boarding? A. Yes.

Q. You heard the evidence of Joslin—that is false? A. Yes.

Q. Mrs. Solomons would be in a position to prove that? A. She can come to Court.

Q. She can prove that you did not leave the boarding house except those two nights? A. And except when I came to Colombo.

Q. Mrs. Solomons is on your list of witnesses? A. Yes.

Q. From there you went to Nuwara Eliya on that day? A. After lunch.

Q. You suggest the photographs were taken there in that house? A. After lunch.

Q. Whose camera? A. Merita's.

Q. You swear the photographs were taken at the Jayawickrema's bungalow? A. Yes.

Q. Nowhere else? A. No.

(To Court :

Q. Is there anything to show that it is Mrs. Jayawickrema's compound? A. It is just outside the entrance in the lawn.

(Mr. Wickremanayake now says that the proctor for the plaintiff says that Mrs. Solomons is not on the list of witnesses of the plaintiff.)

Q. Apart from Mrs. Jayawickrema can you point to anything else which shows it is Mrs. Jayawickrema's compound? A. She will be able to identify her compound.

Q. Then you went off the next day to Nuwara Eliya? A. Yes.

Q. You got to Nuwara Eliya at what time? A. 5-30 or 6 p.m.

Q. Went straight to? A. St. Andrew's

Q. St. Andrew's was full? A. Yes.

Q. Was a room placed at your disposal? A. As soon as I went there I asked for my brother and when I met him I asked him whether he could give us his room. We used his room in the evening.

Q. He was staying at St. Andrew's Hotel? A. He was sharing a room with Mr. George Welsh.

Q. It is not correct that room was placed at your disposal when you dressed for the dance? A. When we came back from the dance my brother said he could give us the use of the room after the dance. When we returned after the pictures he said we could have the use of the room for the whole night.

Q. You heard Miss Ludowyke's evidence that you changed before you went to the pictures? A. Yes. I did not change.

Q. The men also changed? A. I did not change. I had a wash. Miss Ludowyke did a complete change.

Q. The men, can you tell us what they went up to Nuwara Eliya wearing? A. I can't say.

Q. Did Merita change? A. We both had a wash and did up our hair.

Q. You can't tell whether the men changed or did not change? I was in the bathroom; I do not know what the men did. A.

Q. Where did you change in the bathroom to go for the pictures? A. Because Mr. Namasivayam made a request and asked whether we would give the use of the room. We did not wish to argue. We took our things and went off.

Q. Mr. Namasivayam wanted the use of the room before you went to the pictures? A. Yes.

Q. What was the use he put that room to before he went to the pictures? A. I do not know what happened inside the room. We went to the bathroom.

Q. Before you went to the pictures why did he want the room? A. He said he wanted to have everything in one place because I think he wanted to change.

Q. Before you went to the pictures Mr. Namasivayam said he wanted the use of the room because he wanted everything in one place? A. Yes.

Q. The ladies went to the bathroom? A. Yes.

Q. You can't say whether he changed? A. No. I can't re-collect now.

Q. You returned from the pictures and had dinner? A. Yes. We went straight to dinner.

Q. And after that you changed to go for the dance? A. We changed after dinner.

Q. After dinner was there any further request by Mr. Namasivayam that he wanted the room? A. No. We took our belongings and went to the bathroom.

Q. The second time you took your sarees—that is for the dance—and went to the bathroom? A. Yes, and all the other things necessary and went to the bathroom.

Q. Second time it was without any request by the men? A. No.

Q. After dinner he did not make the request? A. I can't remember.

Q. There were two of you ladies who had to wear sarees? A. Yes.

(To Court :

Q. You said after dinner because it was done the first time you took your things and went to the bathroom? A. We did not want to argue. We took everything and went because it was late.)

No. 34
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

Q. You were wearing more expensive clothes than those you went to the pictures? A. Better clothes.

Q. Was it a Benares saree? A. An ordinary saree with a border.

Q. More expensive saree? A. Much more expensive.

Q. You had jewellery? A. No. We were travelling and I did not want to take jewellery. I had a pair of earrings and a brooch.

Q. The three of you dressed in that bathroom? A. Yes.

Q. There was only a small mirror? A. Half size shaving mirror.

Q. How could you find out whether your saree was the correct height from the ground? A. I can do it without a mirror. 10

Q. How long did you take to dress? A. 20 minutes.

Q. The men were ready when you came out? A. The men were not there. The room was empty. We combed our hair, powdered our faces, etc., in the room.

Q. The last make-up was in the room? A. Yes.

Q. Did you use lipstick? A. A little bit.

Q. That was in the bedroom? A. Yes.

Q. Normally you do make yourself up? A. On occasions.

Q. That takes a little time? A. About 2 seconds.

(To Court : 20

Q. Before you went to the dance you would look at yourself in a long mirror to see whether everything was alright? A. Yes.

Q. That was impossible to be done in the bathroom? A. We want a long mirror.

Q. You could not do that in the bathroom? A. Not in the half mirror.

Q. Are you certain that your brother was staying in the St. Andrew's Hotel? A. Yes.

Q. Was he not staying at the Grand? A. No. 30

Q. He was sharing a room with Mr. George Welsh? A. Yes.

Q. After the dance you spent that night in the room? A. We came there about 4 in the morning and were there till light.

Q. How many of you? A. Five of us. Mr. Namasivayam, the doctor and three of us. Mr. Welsh was there and went off.

Q. You did not rest at all? A. No.

Q. Previous day you travelled up from Co'ombo to Bandarawela?
A. Yes.

Q. That day you came to Nuwara Eliya? A. Yes.

Q. You danced till 4 a.m.? A. Yes. We were not one bit tired. 40

Q. I am putting it to you that there were two beds in that room and a couch? A. No. One large bed.

Q. You suggest the hotel provided one bed for your brother and Mr. George Welsh? A. It had one large bed.

Q. You have been to resthouses and hotels? A. Yes.

Q. Have you ever seen a thing like that before? One bed being provided in a hotel for two? A. I have never been to rooms. I have only been to the lounge.

Q. Resthouses? A. Only to the lounge or verandah.

10 (To Court :

Q. Do you like sleeping in a double bed with a person? A. I do not mind.

Q. With your sister? A. I do not mind.)

Q. There was no couch either? A. No.

Q. I am putting it to you that after the dance Namasivayam stretched himself on the couch? A. He was on a chair seated.

Q. And that your sister and Miss Ludowyke stretched themselves on another bed? A. We were on the bed, my sister, Miss Ludowyke and I.

20 Q. Were your feet on the ground? A. We had our feet coiled up.

Q. Were you sideways? A. Yes.

Q. Were your feet on the edge of the bed? A. Yes.

Q. Your feet were not on the bed? A. No.

Q. All three of you? A. Yes.

Q. The two gentlemen sat on chairs? A. Yes.

Q. Rather cold at Nuwara Eliya at that time? A. We had our coats.

Q. Did the gentlemen partially undress? They had their bows
30 taken off.

Q. Did they take their coats off? A. I can't remember.

Q. If they had been taking their coats off and vests off they would have excused themselves? A. Yes.

Q. Have you ever seen anyone remove the collar and bow without removing the coat and vest? A. My husband removes the collar and bow when he returns from the dance because the collar is very limp.

Q. Dr. Samahin said the men were partially undressed? A. I can't remember.

Q. You came back to Colombo the same day? A. Yes.

40 (To Court :

Q. You of course deny any impropriety took place? A. I deny.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

- Q. Either Bandarawela or anywhere else? A. Yes.)
- Q. You wrote to your husband about this trip? A. Yes.
- Q. Did you give him all the details? A. I think so.
- Q. Was your husband aware of the fact that you spent the night of the 18th at the Jayawickrema's? A. Yes. I wrote to him.
- Q. That fact too you had mentioned to your lawyers? A. Yes.
- Q. Your husband answered certain interrogatories? A. Yes.
- Q. And he left the date 18th blank? You got interrogatories served on your husband? A. Yes.
- Q. He gave certain dates and times and places? A. Yes. 10
- Q. He mentioned the 18th April at some place in Bandarawela which he could not specify? A. Yes.
- Q. You remember that he got into the witness box he stated that at that time he did not know you had spent the night at the Jayawickrema. But subsequent to the date of answering the interrogatories he came to know that you had been to the Jayawickremas'? Now Mrs. Alles you told us that you had informed your husband by letter of the fact that you and Dr. Samahin had spent the night at the Jayawickrema's house? A. Yes.
- Q. You knew that he was swearing that he did not know where you 20 spent that night you knew it was false when he answered the interrogatories? A. He knew about it and he did not want to say.
- Q. He went on to state that it was after that he found out it was at the Jayawickrema's? A. Yes. I heard him say that.
- Q. You knew his evidence went over several days? A. A couple of days.
- Q. You produced a letter in which he said he was glad you had a good time? A. I produced all the letters.
- Q. In one of which he referred to this trip of yours? A. Yes. All the letters are there. 30
- Q. You instructed your lawyers that this was in reply to a letter in which you had given him full details of this trip? Read P13. Mrs. Alles. A. Yes.
- Q. There he refers to the fact that you had a good time for the trip? A. Yes.
- Q. That is a reference to this trip? A. Yes.
- Q. You told your lawyers this is in reply to a letter in which I gave him all the details? A. I gave them all the letters.
- Q. The letter you wrote was not there? A. No.
- Q. You said this is a reply to a letter in which you set out all the 40 details? A. Yes.
- Q. How you spent the night at Nuwara Eliya, etc.? A. Yes. He says "Surely I have not the slightest objection".

Q. After you returned Dr. Samahin continued to visit you in the old style? A. Yes.

Q. The old style is the style you have mentioned. Coming there occasionally to find out whether there was anything you happened to want and taking you out for the dances. You said Miss Ludowyke spent some time there? A. Till about 5th or 6th May.

Q. Your lawyers were aware of that right from the beginning? A. Yes.

Q. The servants who were there during that period some of them have been called? Joslin and Alice were both there? A. Yes.

Q. Both would have been aware of the fact that they were there? A. They might have answered if they were asked the question.

Q. Miss Ludowyke was on your list of witnesses too? A. There are so many of them I can't say.

Q. The chief of them being members of the Alles' family? A. Yes.

Q. What are they all going to prove? You gave instructions? Why were the servants not asked the question? A. I do not know.

Q. You had told them all about it? A. Yes.

Q. You had given them several dates on which Miss Neydorff stayed with you? A. Yes.

Q. There also the servants would have been aware of the fact that Miss Neydorff was there? A. Yes.

Q. The only servant who was asked this question about Miss Neydorff was Joslin? A. If you say so I will take it.

Q. You have given us dates when Miss Neydorff stayed there? A. Yes.

2nd page of P16, please read the last two sentences. "I am surprised that Anta has found the time to come to our house. How did she manage it".

Q. That was the time she came there to assist in regard to Merita's birthday party? A. Yes.

Q. Anta there is Miss Neydorff? A. Yes.

Q. That is in reply to a letter of yours? A. Yes.

Q. Mr. Alles says that he was not informed by you except on this occasion that Miss Neydorff had ever stayed there? A. I wrote every time that Anta came.

Q. Then why did he write like that? A. Because Anta is always very busy and she goes to help anybody who wants her help. He must have been surprised that she came to help us in Merita's birthday.

Q. It is not correct that she did not come there at any time except the time mentioned there? A. She is coming she will say when she stayed.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

Q. You can suggest no reason why the presence of Anta was not put to the other witnesses? A. You must ask my lawyers.

Q. Is there a reference to Anta's presence in your house in any other letter? A. I wrote to my husband everything.

Q. You produced 70 letters for initialling? A. Yes.

Q. Is there a reference in a single other letter to Anta's presence? A. But I have written in every letter. They are in my letters. If he does not make a reference in his letters it is no fault of mine.

Q. Mr. Alles came back from Jaffna on the 22nd August? A. Yes. 10

Q. Up to that time everything between you two had gone on very well? A. Yes.

Q. He was a very affectionate husband and it was a happy home? A. Yes.

Q. Affectionate father also? A. Yes.

Q. After his return Dr. Samahin continued to drop at your house? A. He came much more often.

Q. Chiefly at times when Mr. Alles was at home? A. Always when he was at home.

Q. It is not correct that he came there when your husband was in Court? A. He used to meet my husband always before he went to Court.

Q. It never happened that he never came there when your husband was at the Courts? A. No.

Q. What time did your husband leave for Courts? A. 10 or 10-30.

Q. When he was in the Attorney-General's Office? A. About 9 a.m.

Q. He would be in the Attorney-General's Department by 9 a.m. What time did he leave home? A. 8-40. 30

Q. Dr. Samahin came and always met him at home in the morning? A. Yes.

Q. Dr. Samahin has told us that there were occasions when he did turn up after your husband had left? A. I would not contradict him.

(Evidence put to witness.)

Q. Dr. Samahin made it a point to come when your husband was in? A. Yes.

Q. Did he come at any time when your husband was not in? A. No.

Q. The evidence of the servants is false? A. Yes. 40

Q. Your husband had regular hours of work? A. Yes, 10 a.m. to 4 p.m.

Q. As a matter of fact he used to come at 10 o'clock to the Courts?
 A. Yes.

Q. He did not have a car?
 A. He used to get lifts from Mr. L. A. P. Peries.

Q. And sometimes Edgar Samarawickrema?
 A. Just before he left the house Mr. Samarawickrema gave him lifts. When he left with Mr. Samarawickrema he left about 9 a.m.

Q. Can you explain why Dr. Samahin should have stated that he had visited you when Mr. Alles was not there if it was not true?
 A. He may have come once or twice—I do not know.

(To Court :

Q. Were you not bored with these visits of these people day after day?
 A. No.)

Q. Mr. Alles has told us that during this period he found you were going quite a lot and neglecting the baby? Did he say anything to you about that in September or October?
 A. Never.

Q. He used the word that you were gadding about and not giving proper attention to the baby?
 A. He did not say anything to me.

Q. Said nothing to you?
 A. No.

20 Q. Said nothing to Dr. Samahin?
 A. I do not know about that.

Q. You remember the visit of Dr. Wickremasooriya?
 A. One Saturday afternoon.

Q. That was the day on which there was the first row in the family?
 A. Quite right.

Q. Dr. Wickremasooriya, Mr. Alles tells us, informed him that you were in the fifth month?
 A. Yes.

Q. He tells us that that was the first intimation he had of such a long period of pregnancy?
 A. I came and told him about the visit in October. He knew all about it. I told him all what happened. He
 30 knew that.

Q. What happened there?
 A. When I went and saw him in October I told him exactly what Dr. Wickremasooriya said. That I was in the fourth month of my pregnancy.

Q. Mrs. Alles you told us that it was on that occasion you told Dr. Wickremasooriya that you had your last period in August?
 A. I still stand by that.

Q. In December Dr. Wickremasooriya told you that it was not consistent with the date in August and that was why you mentioned the other date?
 A. Yes.

40 Q. In October you knew you were pregnant?
 A. Yes.

Q. You told your husband that?
 A. Yes.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

Q. Of Dr. Wickremasooriya telling you that you were in the fourth month saying nothing about the date in August was not correct? A. He said I was terribly run down and that I must take care of myself.

Q. Dr. Wickremasooriya told you in December you say this date in August does not fit with what I find? Then you were in the 6th month? A. Yes.

Q. In October he told you were in the 4th month? A. Yes.

Q. He did not then tell you that it was not consistent with the date you gave in August? A. He did not say a word about it. He did not ask any questions.

10

Q. If he says that you were not sure of your last menstrual date it is quite wrong? A. I said it was on the 11th August.

Q. He stated that he asked you the date and you were not able to give the date? A. I told the doctor my period that it was on 11th August. If he says that is not so it is a mistake on his part.

Q. Your husband says that Dr. Wickremasooriya says you are in the 5th month and you said George is making a mistake? A. I did not say so. He said Dr. Wickremasooriya says that you are in the 5th month you are run down and you must be careful.

Q. 5th month from November comes to? A. It will be June if 20 you count back.

Q. You had no intercourse with your husband in June? A. Only 9th August.

Q. Your husband never asked you any question about it? A. No.

Q. He told us he counted back 5 months from November and it took him to July? A. He did not say anything to me.

Q. You will admit if he counted back 5 months he would have got to July? A. From July to November it is 4 months.

Q. It will be July or June certainly not August? A. It will not be August. You must count the last date of the period.

30

Q. And the last date of the period was? A. 12th July.

Q. Had you told your husband of this? A. He knows about it.

Q. Mrs. Alles you have written practically everything to your husband in your letters? A. Yes.

Q. You got all your husband's letters? A. Yes.

Q. When the first child was conceived it was a matter of great joy to you and your husband? A. Yes.

Q. You were hoping the second one was a boy? A. I did not mind what it was.

Q. You knew under the Will of J. M. Alles the property would go 40 only to a male child? A. Yes.

Q. You knew also that Dr. Reggie Alles had no children? A. No children up to date.

Q. And your husband was the second male in that family? *A.* Yes. No. 34
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

Q. Your husband would be looking forward to a male child to inherit that? Your last period was on the 12th July? *A.* Yes.

Q. Your husband was in Jaffna till the 22nd August? *A.* He came on the 9th August.

Q. And he went back? *A.* Yes.

Q. He was there till the 22nd? *A.* Yes.

Q. Your next period would be due somewhere between the 11th 10 July and somewhere in August? *A.* I did not write to him when he was in Jaffna that I would be expecting a baby. I knew he was coming on the 22nd. I told him when he came back that I had a period of one day. I told that in September.

Q. When did you tell in September? *A.* I did not have a period in September. I had a one day period in August.

Q. You told about the one day period in August in September? *A.* Yes.

Q. Did you tell him probably that it was not a period? *A.* He said we will wait for another month. I told him that I was taking 20 medicine.

Q. It is not correct that in September you said you missed your period in August? *A.* I told him that I had not a period for this month. He said we will wait for next month. At the same time I told him I had a period of only a day in August. He said we will wait and see next month and if nothing happens to go and see Dr. Wickremasooriya.

Q. You went to see Dr. Wickremasooriya in his bungalow? *A.* Yes.

Q. Who went with you? *A.* I went alone as I always did.

Q. Your husband has sworn that he was unaware of the fact that 30 you had gone to Dr. Wickremasooriya's? *A.* Quite false. My husband telephoned to Dr. Wickremasooriya in October.

Q. When you had your first conception Dr. Wickremasooriya came and saw you in the house? *A.* I went to see him also alone on the first occasion.

Q. When you were bleeding? *A.* He was sent for to the house.

Q. On the first occasion you went with Mrs. Alles? *A.* She went at the later stages. The first time I went all by myself.

Q. On the 22nd your husband told you that Dr. Wickremasooriya said that you were in the fifth month? *A.* Yes.

40 Q. You say that he did not raise any question at all as to how you could be in the fifth month? *A.* Not one word.

Q. His evidence is that the statement worried him did he not show anything to you of his worry? *A.* No.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

Q. Is it a mere coincidence that the only row which took place in the family happened that day? A. He was putting all his anger about the garlic on me.

Q. You told your husband Dr. Wickremasooriya is making a mistake? A. I did not.

Q. You deliberately tried to suppress the dates of your real menstruation from Dr. Wickremasooriya? A. Certainly not. I would not have gone to Dr. Wickremasooriya if that was the case.

Q. You appreciated before your husband's return that you were pregnant? A. No. 10

Q. After Dr. Wickremasooriya's visit did your husband speak to you about going with Dr. Samahin? A. No.

Q. He has told us he made enquiries and he heard there was too much talk? A. No.

Q. The only explanation you can offer is that he did not want to take you to the police and medical dances was because he wanted to go with the Namasivayams? A. Yes. He never spoke to me one day about Dr. Samahin.

Q. The only reason you can suggest why he did not take you for the police dance was because he wanted to go with the Namasivayams? A. Yes. 20

Q. You suggested that he preferred Namasivayams company to yours? A. That is why he went without me obviously.

Q. The only objection was to his going with Mr. Namasivayam? A. Yes.

Q. You object to his going with Mr. Namasivayam or Mrs. Namasivayam? A. I did not like him to join with the Namasivayams at all.

Q. Which of the Namasivayams? A. I think both. Mr. Namasivayam did not apologise and he was getting very fond of Mrs. Namasivayam. 30

Q. When did you first notice that? A. From a long time.

Q. Did you state to Court in evidence in chief that you first noticed it after his return from Jaffna? A. Yes.

Q. On the 18th April did you feel that he was too fond of Mrs. Namasivayam? A. Yes.

Q. Did you think that day that he was too fond of Mrs. Namasivayam? A. That is the time he started to get fond of her.

Q. Did you think at that time that he was too fond of Mrs. Namasivayam? A. He was getting fond of her.

Q. You thought so then? A. Yes. 40

Q. Did you then think that he was sending you off to Bandarawela to go with Mrs. Namasivayam? A. Not that.

Q. You appreciated that he was getting fond of her? A. Yes.

Q. You did not like this fondness developing? A. No.

Q. Why did you agree to the proposal that he should stay behind and take Mrs. Namasivayam to dinner and pictures? A. I did not mind it.

Q. You told us he was paying attention to her and neglecting you? A. Yes.

Q. You did not mind that? A. No. He was only going out to dinner and pictures.

Q. You did not mind the attention you realised that he was paying 10 more attention to Mrs. Namasivayam than to you? A. He started to.

Q. You also realised that he was being left with Mrs. Namasivayam to whom he had begun to show more attention than to his own wife? A. Yes.

Q. Knowing that he was staying behind with the possibilities of paying greater attention to her you went off? A. Yes.

Q. You did not mind his staying behind and paying more attention to the woman with whom he was getting familiar? A. Yes.

Q. Explain how you did not mind that? A. I knew he was going to take her to the pictures.

20 Q. Quite apart from any question of misconduct you would naturally resent his paying more attention to some other woman than yourself? A. Yes.

Q. That is the natural reaction? A. Yes.

(To Court :

Q. Was not Mrs. Namasivayam poaching on your preserves? A. She was.

I spoke to him. He said he was very fond of her and liked her very much).

30 Q. You felt very jealous? A. Of course. (After counsel for the plaintiff had said "Of course").

Q. You resented it? A. Yes.

Q. You resented at that time the attentions your husband was paying to Mrs. Namasivayam? A. Yes.

Q. You still went off though the arrangement was that your husband was to take Mrs. Namasivayam to pictures and dinner? A. Yes.

Q. Did you also agree to the question of leaving the child? A. Because my husband made the request.

40 Q. You knew the fact that the child would be there would give him a greater opportunity and reason for going to the Namasivayams? A. Yes.

Q. On the previous occasion the child was sent to Dr. de Costa? A. Yes.

No. 84
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

Q. You knew that Stannie was deliberately having this child sent to Namasivayams to have an excuse for his going there? You said just now that you sent the child to the Namasivayams because Stannie wanted it? A. Yes.

Q. You say the child was at Mrs. Costa's? A. I sent it.

Q. You did not suggest that the child should be sent to Mr. Costa?
A. No.

Q. Why? A. I was taking the child along with me.

Q. Did you when your husband made the suggestion think that he was seeking a further excuse to go to the Namasivayams? A. No. 10

Q. Will you tell me feeling that your husband was paying too much attention to Mrs. Namasivayam why you agreed to the scheme of your going off and his taking Mrs. Namasivayam to pictures and dinner?
A. No answer.

Question repeated. I was going along with Mr. Namasivayam for the dance and I thought it was nothing but right that Stannie should take Mrs. Namasivayam.

Q. Namasivayam had never been paying more attention to you than he paid his wife? A. No.

Q. So that there was a difference? A. Yes. 20

Q. You did not mind however? A. No. I was keen on going for the dance.

Q. You told us that Stannie went round to the Namasivayams on his way to the Courts and made the arrangement? A. Yes.

Q. That time Stannie had no car? A. He went with Marcus Silva.

Q. He was given a lift to the Courts daily by Mr. Nihal Gunasekera?
A. I do not know about Nihal Gunasekera.

Q. The Namasivayams have a telephone? A. Yes.

Q. You got a telephone? A. Yes. 30

Q. He went round to the Namasivayams to make the arrangement?
A. Yes.

He said it would not be nice to telephone that he will go personally and make the request and I said alright.

Q. You wrote to your husband and he replied by P22? A. Yes.

Q. Teddy is Miss Ludowyke? A. Yes.

(To Court :

Q. That is a reply to a letter written by you to your husband?
A. Yes.

Q. Can you cast your mind to the 21st July and tell us what was it 40 that you said in your letter to him about Samahin's preserves? A. I did not tell about Samahin's preserves.)

Q. Can you tell us what you wrote? A. We were one day at the Ludowykes. We were having a little fun. Somebody said do not tease Teddy. Stannie has got a soft corner for her.

Q. You conveyed that to your husband? A. One day I just repeated to him when I wrote to him. He sent this reply P22.

Q. Was Miss Ludowyke Samahin's preserve? A. I do not think so because we were all teasing her. We used to tease Teddy about Dr. Samahin.

Q. Why? A. What was the reason for teasing her coupling her name with Dr. Samahin? A. Because Teddy always liked to be in Dr. Samahin's company. She would say she will go in Dr. Samahin's car. We used to tease her about it.

Q. That is with reference to your statement that somebody had made a remark? A. Yes.

Q. Was it you who were teasing Teddy? A. We were always teasing Teddy.

Q. Who are the we? A. My sister, Stannie and I.

Q. You said you were teasing Teddy who were the party? A. There was a crowd of us.

20 Q. Among whom you were there? A. Yes.

Q. Dr. Samahin was there? A. Yes. Teddy her mother, her father and a big crowd.

Q. You were teasing Teddy about her fondness for Dr. Samahin's company? Somebody said do not tease Teddy Stannie has got a soft corner for her? A. I did not think there was anything in that. I wrote to Stannie about it. Stannie's reply was "Good gracious that is Dr. Samahin's preserve."

(To Court :

Q. What do you mean by preserve? A. A particular girl friend.

30 Q. Do you know what the word preserve means in English? You know what preserved grounds are? A. Yes.

Q. What? Exclusive shooting and fishing? A. Yes.

Q. Can you construe that word preserve? A. I do not know what Stannie meant).

Q. You wrote a letter to him in which you made a suggestion about Mrs. Namasivayam? Are you suggesting in the letter you wrote—did you suggest anything more than you suggested in the letter about Teddy? A. I say that my husband is more fond of her.

Q. You questioned him as to where he went? A. I must have said I hope you had a fairly good time with Mrs. Namasivayam.

Q. You said at that time you felt too much familiarity? A. He liked her very much,

No. 34
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

Q. Did you say you thought he was in love with her? When you were asked what made you first think he was in love with Mrs. Namasivayam this is the answer you gave.

(Counsel reads the evidence). Q. Your position then was that it was only after his return from Jaffna that you felt that he was too fond of her? A. He was getting too fond.

Q. You told us that in spite of that you received a present from Mrs. Namasivayam on 3rd November? A. Yes.

Q. You told us that you were not on speaking terms with Mr. Namasivayam? A. Yes. 10

Q. You would cut him dead? A. Yes.

Q. You took the present because it was only from her? A. Yes.

Q. In proof of that you produced the card sent by Mr. and Mrs. Namasivayam the year before and the card sent by Mrs. Namasivayam that year? A. Yes.

Q. In November you had a grievance with Mr. Namasivayam—you had been insulted and he had not apologised? A. No.

Q. You were not badly disposed towards Mrs. Namasivayam? A. Not even today.

Q. When your husband was going about telling you he was going with lawyers and he was going to Namasivayams you were very angry? A. Yes, and he was lying to me. 20

Q. When the police dance came on Mr. Alles told us that he did not want you to go for the dance for several reasons? He said there was too much scandal? A. I deny that.

Q. He told us that he did not think and you agreed that it was not proper that a woman who was pregnant should go for dances? A. I do not think so.

Q. Having in mind that you were in bed 5 months during the first pregnancy he thought it might affect your health? A. He did not tell me anything. 30

Q. In point of fact you told us that when you went to see Dr. Wickremasooriya you were very badly run down? A. Yes.

Q. When he saw you in November you were very badly run down? A. Yes.

Q. Did he tell you not to go to that dance? A. No he never said.

Q. You had made arrangements to go? A. We had all made arrangements to go. My husband included.

Q. Is it correct that you were giving tickets to the Ludowykes? A. I said if I was getting tickets I will give the Ludowykes. 40

(To Court :

Q. Who is this Ludowyke? He is a post office clerk? A. Yes.

Q. Is he as well off as you? Or as badly off? A. He is better off than I am today.

Q. Is he of the same social status? A. I think so.

Q. You know how much he was earning? A. No.

Q. Could girls of that status go for dances? A. They have gone before us.)

Q. You yourself offered tickets to the Ludowykes on that occasion?
A. Yes.

Q. According to you when was it that your husband told you he was going with the Namasivayams? A. On the morning of the dance.

Q. You objected? A. It gave me a shock because he had prepared to go with us. That morning of the dance he said he was going with the Namasivayams and that too I found out when his dress suit was put out.

Q. Did Teddy call that night? A. Yes, with her mother.

Q. Before Teddy called that night your husband told you he was going with the Namasivayams and you cleared out of the house?
A. Yes.

Q. You had offered tickets to the Ludowykes? A. Yes.

20 Q. You thought you should explain to the Ludowykes that you were letting them down? A. Yes.

Q. You rang up Miss Ludowyke and told her? A. No.

The only conversation I had was with my husband who told me not to leave the house.

Q. Had you given the tickets to the Ludowykes? A. They came that night.

Q. That morning you had decided to leave the house? A. Right.

30 Q. Did it strike you that you were letting the Ludowykes in a mess?
A. My intention was to come back.

Q. When? A. After my husband apologised to me.

Q. The dance was that night? A. Yes.

Q. You expected your husband to come and apologise to you?
A. I knew if I left the house he would come for me.

Q. You were certain about that? A. Yes, Quite.

Q. You were certain of that because he was fond of you?
A. Yes.

Q. You felt certain about that because of his treatment of you during the last 8 years? A. Yes.

40 Q. You went away knowing for certain that he would come and fetch you back? A. Yes.

Q. You knew you were going to insist that he was not to go for the dance? A. Yes.

No. 84
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

Q. He came and fetched you back? A. Yes.

Q. Did you insist that he should not go for the dance? A. Yes.

Q. You told us it was only after he suitably apologised and he promised he was not going for the dance that you came back? A. Yes.

Q. That night did Dr. Samahin come before the dance? A. Yes.

(To Court :

Q. He came to Wellawatte and apologised? A. Yes and brought me home. 10

Q. Before you came home you laid down your conditions? A. Yes.

Q. You had the enemy where you wanted? A. Yes.

Q. You told us he was not to go for the dance with the Namasivayams? A. He said he would not go for the dance but stay with me.

Q. What did you say to that? A. I was very happy about it. I also agreed to that.

The Ludowykes were coming home for the tickets.

Q. That was a subscription dance in aid of War Funds? A. We had tickets. His brother sent me the tickets. 20

Q. Who dropped in first Dr. Samahin or the Ludowykes? A. I have no recollection.

Q. Dr. Samahin turned up that night so did the Ludowykes? A. Yes.

Q. Who came first? A. We had some other visitors too. The Krishnaratnes were also there.

Q. Dr. Samahin and the Ludowykes both came in connection for the dance? A. I think Dr. Samahin came first the Ludowykes came later because they were all dressed for the dance when they came. 30

Q. Dr. Samahin came in his ordinary clothes? A. He was in a white suit.

Q. You spoke to him? A. My husband spoke to him.

Q. What was Dr. Samahin told? A. When I came from my aunt's there was a telephone message for my husband from the Namasivayams. Then he made up his mind to go again.

Q. What did he tell Dr. Samahin? A. He said he can't help. He will have to go with the Namasivayams. He told that he had promised me that he would not go with the Namasivayams that in spite of that there was a telephone call and he must go with the Namasivayams and he asked him to bring me. 40

Q. You did not want him to go with the Namasivayams you said that? A. He said that.

Q. He said that he had promised you not to go with the Namasivayams? A. Yes.

Q. Did he tell at what time he had promised? A. No.

Q. When you told him he was going with the Namasivayams did you not remind him about the condition? A. I kicked up a row.

Q. You kicked up the row in the presence of Dr. Samahin? A. No, before Dr. Samahin came.

Q. He told Dr. Samahin that he had promised you not to go but that he had a telephone call and was compelled to break his promise?
10 A. Yes.

Q. When he told you all this did you not tell him I came back on the distinct understanding—I will clear out again? A. I did. I told him that if you think you are doing right by breaking your promise you better go.

Q. There was a lot of trouble? A. I said all I had to say and everything was forgotten.

Q. When the Ludowykes came what did you tell them? A. I gave them the tickets.

Q. Did they not ask you why are you not coming with us? A. I told them that my husband had made a promise and he had changed his mind and I said I had not decided about coming.
20

Q. Did the Ludowykes know that Stannie was getting too friendly with Mrs. Namasivayam? A. They were teasing him about it. When Stannie used to say he was going out the girls used to tease him. I did not tease him.

Q. Did Miss Ludowyke tease Stannie about it? A. Yes. I also commented about it.

Q. The only thing that made her think that Stannie was paying too much attention you used to say “you are going to the Namasivayams”?
30 A. I must have said so. I did not go to tell everybody that he was going to Mrs. Namasivayams.

Miss Ludowyke's evidence put to witness.

Q. Did you have any cause to think that he was paying any attention to her? A. Yes.

Q. You told us the Ludowykes also felt that he was paying too much attention to her? A. I have heard them distinctly tease my husband about it.

Q. Miss Ludowyke may not be quite correct? A. I do not know. I do not know whether her idea is the same as mine.

Q. Did you tell the Ludowykes why you were not going for the dance?
40 A. I said Stannie is not going to take me I do not think I will come.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

Q. Did they tell you come along with us? A. No. They asked me to come. We will all be there. They said our party will be there except you.

Q. You were the hostess that day? A. I gave them the tickets.

Q. Did they not ask you to come with them? A. No. They tried to induce me to go but I did not want to go.

Q. The reason you gave was that? A. Stannie was not going with me.

Q. Did you tell them that it would be ugly for Stannie to go with another party and you to go with another party? A. I do not 10 remember saying so. I said Stannie has broken his promise and I do not feel like going. I have no recollection of saying that.

Q. Did you not give any reason or is it that you have no recollection? A. I can't remember.

Evidence put to witness. That evidence is quite true. I said Stannie will go without me.

Q. You gave that as a reason? A. Yes.

Q. Later on in the night you rang up Dr. Samahin and asked him to take you to the dance? A. After my husband left in spite of my asking him not to go I was very angry and I thought I will get Dr. Samahin 20 to take me.

Q. To spite him you did the one thing he wanted you not to do? A. He told me that I could go with Dr. Samahin.

Q. He was going with the Namasivayams so you were going to spite him? A. Yes.

Q. You did that to spite him because your husband did ask you not to go with Dr. Samahin? A. I was very angry and I thought it was no use staying in the house I will go. His last words were "I hope you will come to the dance instead of being alone in the house."

Q. How were you spiting him by going to the dance? A. 30 Because he went in another party.

Q. He begged of you to come with Dr. Samahin? A. Yes.

Q. He was keen on your coming to the dance with Dr. Samahin? A. Yes.

Q. As a matter of fact he picked an orchid and told you to promise him? A. Yes.

Q. How is that spiting? A. I adopted the word.

Q. You were extremely annoyed with your husband and wanted to teach him a lesson? A. Whom else could I have gone with. I would not have gone with Mr. Namasivayam for anything in the world. He 40 would be annoyed because he would be with the Namasivayams and I was there.

Q. You were doing something to annoy your husband? A. Yes. I was very annoyed that he left me alone at home.

Q. You did something to teach him a lesson? A. Yes.

Q. How could you teach him a lesson by doing the one thing he wanted you to do? A. I thought you have left me at home; you asked me to come with Dr. Samahin I will come with him.

Q. You used the words to teach him a lesson? Will you tell us how you were going to teach him a lesson by doing the very thing he had begged you to do? A. I will give an answer if you will give me a little time to think.

(Witness is given time.) The idea was Namasivayams were determined to take my husband with them and he wanted to show me that even though I was insulted he could take my husband about. I thought I would teach all of you a lesson.

Q. How were you teaching him a lesson by doing what Mr. Alles wanted you to do? A. That in spite of everything that I was there for the dance.

Q. Not in spite of everything but because of his original request? I am putting it to you that your statement that you would teach him a lesson is correct and that was by going to the dance with the same man with whom he had asked you not to go? A. No. He never asked me that.

Signed R. F. DIAS,
District Judge.

Case postponed for tomorrow.

26-1-43.

Counsel as before.

MERLE ALLES Sworn :

Further Cross-examined.

Q. You went to the Police dance and you left the dance before your husband? A. Yes.

30 Q. At what time did your husband get back? A. Early hours of the morning.

Q. Did he speak to you about the dance? A. No.

Q. His evidence is he asked you what you meant by going? A. No he did not ask me one word.

Q. It is not correct that you told him I will go where I like and with whom I like and so on? A. Not true.

Q. There was no row? A. No.

Q. The next thing was the Silver Wings Carnival? A. Yes.

40 Q. When did you first know he was going to the carnival? A. At lunch that afternoon.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

Q. At lunch that afternoon Dr. Samahin was there when it was discussed? A. Yes.

That was the first time there was any talk between him and I about it.

Q. Who broached the subject about the Silver Wings Carnival?
A. Dr. Samahin.

Q. And what did your husband say? A. He said he had been invited by Mr. and Mrs. Namasivayam and that I could go with Dr. Samahin.

Q. What did you say? A. You do not want to take me. As¹⁰ usual I am thrown on Dr. Samahin again to take me out and you are going with the Namasivayams and even to the Police dance you went with them.

Q. This discussion took place in the presence of the doctor? A. Yes.

Q. It is not correct to say that he said he was not going at all?
A. No he said he was going with the Namasivayams.

Q. That has been your position all along? A. Yes.

Q. Your husband was cross-examined on this—" Did the 2nd defendant invite you to go with him to the carnival—No. Did you²⁰ not say you were not going to the carnival at all that night? No." That question was put on your instructions that your husband said that he was not going to the carnival at all? A. I do not know what my counsel asked but my instructions were not that. My counsel may have put it in that way to find out his exact position.

Q. You were present of course throughout the proceedings 1st defendant was questioned on the question by Dr. Samahin's counsel also—" My instructions are that 2nd defendant invited you to go.....and you replied you were very busy and could not go"? A. That is not correct.

80

(To Court :

Q. Both counsel took up the position that when Dr. Samahin invited your husband he said he could not go, you cannot explain that? A. No.)

Subsequent to that Dr. Samahin gave evidence. Counsel reads the evidence.

Q. Dr. Samahin heard all this talk between you and your husband and you say " you are throwing me on Dr. Samahin, etc. "? A. Yes he was at the table.

Q. So that Dr. Samahin by that time realised that there was⁴⁰ friction between husband and wife on this point? A. I do not think he realised there was any friction, only my comment.

Q. He knew there was some trouble between you and your husband about his going with the Namasivayams and not taking you? A. He must have gathered that but I never spoke to him about it.

Q. He heard the conversation? A. Yes.

Q. At what time of the day did Dr. Samahin drop in for you?
A. He came just as my husband left. About 10 or 15 minutes after he left—about 9 o'clock.

Q. Did you have any telephone communication with the doctor between lunch and his coming? A. I cannot remember.

Q. He called and you told him that your husband had gone with the Namasivayams? A. He knew that he had gone with the Namasivayams.

10 (To Court :

Q. He came by arrangement to take you? A. Yes.)

Q. He took you. At the carnival did you see your husband there?
A. Yes. I did not speak to him.

Q. Why not? A. There was nothing to speak about.

Q. How long did you spend at the carnival? A. Till about 12 o'clock.

Q. You spoke to other people there? A. I did not speak to any one.

Q. You went round with the doctor? A. I did not go round
20 everywhere.

Q. You did not speak to your husband at all? A. No. I met him there and I met his brother.

Q. At the Police dance you met him and he came and danced with you. He said he danced with you to keep up appearances?

(To Court :

Q. You said you went under the enemy's guns and took away your husband, you wanted to take him away from Mrs. Namasivayam's company? A. Yes.

Q. You did that on purpose? A. Yes.)

30 Q. But on this occasion you say you did not go and speak to him at all? A. Conditions were different. This was not a dance it was a carnival.

Q. Your husband did not come and speak to you either? A. There was no occasion for him to come and speak to me he just smiled and I smiled.

Q. Did you smile to Mrs. Namasivayam? A. I said hallo to both of them.

Q. So your grievance still was against Mr. Namasivayam? A. Yes.

40 Q. And you returned from the carnival before or after your husband?
A. I think I came in just as he got into bed. He was up when I came and he opened the door for me.

Q. There was no row on that occasion? A. Not one word,

No. 34
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

Q. It was an arrangement that was suitable to both parties? A. Yes.

Q. Your husband has told us that there was a row again on that occasion? A. There was no row at all.

Q. He was in bed. He treated you very cordially and asked you whether you had a good time? A. Yes.

(To Court :

Q. When did you have the first row, when was there the breach after he returned from Jaffna? A. 5th December.

Q. Till then you were quite happy? A. Yes. 10

Q. Then he left you on the 19th December? A. Yes.

Q. Did you have relations with your husband in between that time?
A. Yes on 15th or 16th December. That was the last time.

Q. You swear that? A. Yes.)

Q. You heard that same question put to your husband by the Court and he said he had no relations with you after Dr. Wickremasooriya's visit in November? A. I heard him say that.

(To Court :

Q. After your husband returned from Jaffna finally until 15th or 16th December about how many times did you have relations? A. 20
Two or three times a week.

Q. It was normal? A. Yes.)

Q. You heard your husband's evidence that it was after Dr. Wickremasooriya's statement that he first began to feel there was something wrong? A. Yes I heard it.

Q. Did you realise there was some connection between the two, his position that it was Dr. Wickremasooriya's statement that gave him the jolt and his statement that after that visit he had no connection with you?
A. No I did not.

Q. Did your lawyers ask you when you last had relations? A. I 30
remember I reminded Mr. Ameresekere at that time and he said he will attend to it.

Q. You reminded him then that relations had gone on till a couple of days before he left? A. Yes.

Q. Quite apart from that his letter to you P2 stated that it was owing to continuous rows and quarrels over Dr. Samahin.....? A.
From the beginning I said that the letter was not true.

Q. Far from there being quarrels and rows about it you say you have been living happily until a day or two before he went away? A. Yes.

Q. The reply you sent to P2 was drafted by your lawyers? A. 40
After I had said what I had to say.

Q. And you told them everything was perfectly alright and that you lived as husband and wife till a couple of days before he left? A. Yes.

Q. The first quarrel about going about separately was on the day of the Police dance? A. Yes.

Q. Did you tell Dr. Samahin anything about those quarrels? I never discussed anything about our affairs with him.

Q. However good a friend he was these were not matters you discussed with him? A. No.

Q. Why did you then in front of him say that you were being thrown on him to be taken out? A. I only commented about it.

(To Court :

10 Q. Did the 2nd defendant make love to you? A. No.

Q. Kiss you? A. No.

Q. Hold your hand? A. Never.

Q. No words or action ever passed between you? A. No.)

Q. The next event was the medical dance, you said that Dr. Samahin had invited you to the dance? A. All of us.

Q. When was it? A. Some time in December, early December.

Q. And your position is your husband accepted that invitation? A. Yes.

Q. The Medical dance was on the 19th December that year? A. 20 Yes.

Q. On the 20th was Dr. Samahin's birthday? A. Yes.

Q. At your birthdays there has always been a party? A. Yes quite a number of my friends used to come.

Q. And they dropped in at every anniversary of your birthday during the time of your friendship with Dr. Samahin? A. Yes.

Q. And most of your friends give you presents? A. Not all of them.

Q. Most of them? A. My husband and sister and father, not everybody.

30 (To Court :

Q. Did Dr. Samahin give you presents? A. No.

Q. Not even a bunch of flowers? A. No.)

Q. Did the Namasivayams give you presents? A. That is because I give Mrs. Namasivayam at her birthday.

Q. Mrs. Namasivayam gave you a present in 1941? A. Yes and I had sent her one in February.

Q. She sent you some article of clothing? A. Yes she sent me something which I could not use and I got it exchanged at Chandiram's.

Q. And on Dr. Samahin's birthday in 1940 you and your husband 40 gave him a present? A. Not I.

Q. Are you aware that he was given a present at all a cigarette case? A. No.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

Q. There is no reason why a thing like that should be kept dark from you? A. I did not know my husband gave him a present. He is not in the habit of giving presents to any he takes them but would not give.

Q. Not even to you? A. A small bottle of Eau de Cologne.

Q. And Dr. Samahin gave you a big bottle of scent? A. He did not give me a present at all.

Q. In the same way that your birthdays were celebrated Dr. Samahin's was celebrated? A. I have never been to his house.

Q. Then he came and partook of your refreshments and never invited you to his house? A. No. 10

Q. Did not invite you to dinner somewhere? A. Yes he has.

Q. He has celebrated it and entertained you that way? A. Yes.

Q. When he invited you to the dance he said his birthday would have dawned before the dance was over? A. No.

Q. Is it not the fact that you were going to the dance because Dr. Samahin's birthday would dawn while you were dancing? A. No. I went because I like dancing if it was his birthday I could see him in the morning in the house.

Q. You knew the date of his birthday? A. Yes.

Q. At that time your husband had a gold wristlet watch? A. 20
He had five or six wrist watches.

Q. An Ursula watch which you had bought him? A. I have bought him four or five.

Q. All gold? A. Not all gold. I gave him another one before he left the house also.

Q. Up to the time he left the house up to 1941 you had given him one gold watch? A. Yes and before he left he took another.

Q. Now is it correct you told him that there is a better watch at Hamer Bros. I want to change this there is a Cyma watch there? A. 30
They do not take watches in part exchange. I never told him that there were very pretty watches at Hamer's and I will buy him one for Christmas.

Q. You in fact did give a Cyma watch? A. Yes I bought him a watch but I do not know what make.

Q. From Hamer's? A. Yes.

Q. He has told us that when you got the new watch you said you had given the other one in part exchange? A. No.

Q. You now know that Hamer's do not take watches in part exchange? A. I know that.

Q. You heard Hamer saying that they did not take your watch in part exchange? A. Yes. 40

Q. Did you give that watch to Samahin on the 20th morning as a birthday present? A. I gave him no present. The watches were in the wardrobe and my husband took them away when he left.

Q. With regard to the Medical dance you say that all arrangements were made by your husband and you first heard that he was not going on that day? A. That morning.

Q. You say that the reason he gave that day was that he had a lot of work? A. He said that the Attorney-General had sent for him and given him a big brief.

(To Court :

Q. Did he say what was the nature of the case? A. No he said that it was a case like the Jaffna case.

10 Q. Did he say where the case was being heard, in which Courts?
A. In Colombo.

Q. Supreme Court, District Court or Magistrate's Court? A. He said that the case he appeared in Jaffna was coming up in Colombo.

Q. Before the Court of Criminal Appeal? A. Something like that.

Q. What appeals were being heard in Colombo on the 19th December?
A. He said if he went for the dance he would not be able to get ready. He said he had to get it ready for the Attorney-General.

Q. To prepare a statement for the? A. Yes something like that.)

20 Q. So he told you it was the same case that had come up in Jaffna which was in appeal? A. Something like that.

Q. Do you know what happened to that Jaffna case in Jaffna? A. No. I never asked him about it. I never ask him about his work.

Q. Do you know that it had come up and had been decided in appeal also before that date? A. No I did not know this is what he told me.

(Counsel says that the Milady case was decided by the Court of Criminal Appeal in September, 1941, and that it is reported in the Law Reports.)

30 Q. The Medical dance was on the 19th December that was Friday, did you tell him you have all Saturday and Sunday to work on it? A. I told him after all we have made arrangements to go for the dance why not go for it and you know if I go for a dance how tired I am the next day and on Sunday we go for mass and half the day is gone. I go for mass at 6-30 and it is over at 7-30.

Q. You could have gone for mass and have the day for your other activities? A. Why should we oblige my husband.

Q. We meaning yourself and Dr. Samahin? A. Why should it be Dr. Samahin and I. I said we because my sister was also there.

40 Q. What activities were you not prepared to give up? A. If he was not prepared to oblige us by going to the dance why should we oblige.

Q. He had the whole Saturday and Sunday? The whole Saturday he would have slept after the dance.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

(To Court :

Q. But there are Crown Counsel who work hard many hours and they go to Church and do their work and take their wives out? A. I never saw my husband work very hard, so hard as other Crown Counsel.)

Q. You say you have never seen your husband work as hard as other Crown Counsel? A. I have never seen him work in the early hours of the morning.

Q. As a matter of fact your husband was inclined not to do much work? A. I never saw him study his brief for a long time.

Q. Throughout his whole career at the Bar? As Crown Counsel. 10
Or as anything at all? A. Yes.

Q. Here he was then having this brief and would be working till about 11 or 12? A. But he had the whole of the Sunday if he came for the dance.

(To Court :

Q. Assuming it was the Milady case, he had the facts at his finger ends, he was only restating the story for the Attorney-General to study the facts? A. That was the case he gave me I suppose that was an excuse to clear out of the house.)

Now I realise he must have gone to see his mother and brother that 20 day.

Q. His mother was in the witness-box called as your witness and she has told us that she never met 1st defendant between May and the 19th December except on one occasion when she took him to see Mr. Jayetilleke. A. That is not true, because I heard him say the other day that he had been to his mother's place a number of times on his way to work.

Q. Your husband refused to take you to the dance did you give him any particular reason for wanting to take him to the dance? A. I worried him a lot to go.

Q. As a matter of fact even after he went to Hulftsdorp you rang 80 him up? A. No all the time I thought he was going and when my sister came she 'phoned up my husband to say she had come and he said I am very sorry to disappoint you I am not going for the dance because the Attorney-General has given me a brief.....

Q. There was particular reason why your sister was anxious to go that day? A. I do not know.

Q. It was put by your lawyers that your sister was anxious to go to the dance? A. Yes.

Q. And the reason was that there was a young man who was expected to be there? A. I do not know. 40

Q. A young man whom your father thought desirable to be met at the dance? A. Certainly not my father does not interfere in such matters.

Q. That day Dr. Samahin turned up and the Ludowykes were there, who came first? A. Dr. Samahin came in first.

Q. And 1st defendant was wearing a sarong and banian? A. He came and said the girls are not ready yet, this is the first time you have not been ready for a dance.

Q. Did 2nd defendant sit down to dinner with you? A. Yes. We were going for dinner and I asked him whether he was after dinner. He had some drinks with 1st defendant and had dinner.

Q. While you were eating the Ludowykes' turned up? A. Yes.

10 Q. They had already dined? A. Yes.

Q. And you went off to the dance? A. Yes.

Q. Your husband saw you off? A. Yes. He gave me Rs. 10 and gave me a kiss.

Q. What was the Rs. 10 for? A. He said keep it for anything you want.

Q. That is the price of the ticket? A. He did not say that is for the ticket.

Q. What did you want at the dance beyond your ticket? A. Drinks or anything like that.

20 Q. Who was the host on this occasion in whose charge were you? A. In the doctor's.

Q. So why did you want Rs. 10 for? A. He gave it to me.

Q. Any drinks and things would come from Dr. Samahin? A. Yes. But he gave me the Rs. 10 and said keep it.

Q. Was it the price of the tickets? A. I do not know.

Q. You knew the price of the tickets at the Police dance? A. No.

Q. He has told us he gave you Rs. 10 for the ticket? A. I did not know that.

30 Q. Was that given in the presence of Dr. Samahin and the Ludowykes? A. My sister was there and she saw it. I do not know if the Ludowykes saw it. He came to my bedroom and gave it to me when I was just going out of the room.

Q. And he kissed you in the porch? A. He gave me the money and he came out and when I said cheerio he gave me a kiss. That was outside.

Q. If he gave this money to you in the bedroom how did Merita know about it? A. We were both there powdering at the time.

Q. You and Merita just before leaving for the dance went into the bedroom to powder your faces? A. Yes.

40 Q. The Misses Ludowyke did not want to powder their faces? A. I do not know. There was my room and my husband's room and they may have gone into his room.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

Q. If they wanted to powder their faces they would have come into your room? A. But I do not think they wanted to.

(To Court :

Q. After dinner just before you started off you and Merita went into the bedroom? A. Yes.

Q. When ladies retire like that is it usual even for the husband to go into the room while two women after dinner are getting ready to go to a dance? A. He has only come to his wife's room.

Q. The wife is there with her sister? A. The door was open and the curtain was open.) 10

Q. The Ludowykes' did not come into that room to powder? A. No, I have no recollection. My husband came out from his room into my room. From the dining room he went to his room and came to my room.

Q. And he produced Rs. 10? A. Yes.

Q. He gave you the Rs. 10 and said have a good time? A. No he said keep this you might want money.

Q. From the bedroom where did you go? A. I waited for a little while and I had a few other things to attend to and by that time my sister had left the room. 1st defendant walked out of the room and then my sister walked out. 20

Q. Then you walked out? A. I came out and I had to give the keys to the ayah and so on. I joined them in the outer verandah.

Q. Within two days of his going away you saw your lawyers and discussed this matter? A. The next morning and not two days. I saw my lawyers that afternoon.

Q. That was the day after you got the letter? A. That was after I got the letter.

Q. Did you tell them he is now accusing me of having gone about with Dr. Samahin in spite of his protests, that he sent you out with Dr. Samahin and kissed you goodbye in front of Dr. Samahin and so on? A. 80 Yes I gave all those instructions.

(To Court :

Q. Can you explain why that question was not put to the 1st defendant? A. I cannot say.)

Q. When Mr. Alles gave evidence no suggestion was made to him? A. Miss Ludowyke saw it. Mr. Samahin was getting into the car when he kissed me.

Q. Miss Ludowyke has told us that the whole party was there at the time? A. The doctor had gone down the steps.

Q. How did you go? A. I went in Dr. Samahin's car. I sat 40 in front with the doctor and Miss Ludowyke and my sister sat behind.

Q. Dr. Samahin would not normally get into the car before the ladies got in? A. It was raining at the time too.

Q. That car was in the portico? A. Yes, he was getting it ready for us before we got in.

Q. Dr. Samahin then may not have seen the kiss as he was getting into the car you say? A. Yes.

Q. You received the first letter from Mr. Ameresekere on the 20th between 10-30 and 11-30? A. Yes.

Q. You saw your lawyers before 2 p.m. that day? A. Some time in the afternoon.

Q. This letter stunned you? A. It did.

10 Q. Contained a tissue of absolute falsehoods? A. Yes.

(To Court :

Q. You were a very injured woman that day? A. Yes.

Q. Without any rhyme or reason your husband had left you? A. Yes.

Q. And you were entirely without blame? A. Yes.

Q. And he had added insult to injury by giving you a sum like Rs. 10 and kissing you? A. Yes.

Q. You told that to your lawyers? A. I told them all that happened.

20 Q. All those things too? A. Yes.)

Q. You went there in the first instance because you had received this letter? A. Yes.

Q. That letter contained a tissue of falsehoods—Counsel reads the letter. He says “My attitude towards your going about with Dr. Samahin should have made it sufficiently obvious to you of my disgust and disapproval”? A. I never saw any attitude.

Q. Did you not tell your lawyers this is all rubbish, he kissed me good night that night? A. They saw the letter.

80 Q. Never mind the letter did you not tell them that? A. Yes I told them.

Q. Your lawyers drafted you a letter? A. Yes.

Q. That is a very long letter running into several pages? A. Yes.

(Shown 1D5.) My handwriting is large and therefore it runs into several pages.

Q. Your lawyers drafted it and sent it to you and you wrote it and sent it? A. Yes.

40 Q. You consulted your lawyers on the 20th they did not rush a letter at once they took two days to consider it and it was a carefully considered letter they sent? A. I do not know what they had to say. They said if I had any letters to produce them and I took them to my lawyers.

Q. Did you send a reply on the same day that you received the draft? A. That very same day.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

Q. It is a long letter which meets point by point all these allegation made in P2 but you have no suggestion to offer why the kiss was not referred to or the Rs. 10? A. I do not know my lawyers will explain that.

Q. The dance was over in the early hours of the morning? A. About two o'clock.

Q. You stayed on there after the dance for some time? A. Yes had a few drinks and came back. After the dance we had two or three drinks of lemonade.

Q. But the 2nd defendant was a steward and had work to do? A. 10 We were in my brother's company and then the doctor came and met us again and we had drinks and left.

Q. By the time the dance was over the doctor's birthday had dawned and you stopped there to drink his health? A. No we were not celebrating it at all. By 12 o'clock we had a drink at his birthday. We were served a round of drinks.

Q. What for because of his birthday? A. I do not know he did not say anything a round was served and we drank.

Q. At midnight as the clock struck? A. About that time.

Q. That round was served in view of the fact that his birthday had 20 dawned? A. Yes.

Q. And you drank his health? A. No he was not there when the drinks came round.

Q. Did you say wish you many happy returns of the day? A. I cannot recollect, I must have.

Q. Very good friend of yours? A. But I did not think of it at that time.

Q. He has been always attending your birthday parties? A. Since 1940.

Q. He has attended 1st defendant's birthday too? A. Yes. 30

Q. He had taken you and your husband out and entertained you at his birthdays the previous years? A. Yes.

Q. And you have no recollection of having wished him? A. I may have done it or not I cannot remember.

Q. As a matter of fact you remember that it was his birthday while you were dancing? A. Yes.

Q. And you danced with him after 12 o'clock? A. No. Because my programme was quite full up and there were no more dances for him.

Q. How many dances did you give him that day? A. About 40 two.

Q. You left with him, he was the first person who would see your programme? A. Yes but there were many ladies in our company why should I only dance with him.

(To Court :

Q. Have you got that programme? A. No. I lost a lot of things that night from the dance, balloons and caps and so on in the confusion that I came back.

That is the only dance programme I have not got.

Q. You have the other programmes? A. Yes).

(To Court :

Q. Have you got the Police dance programme? A. No I did not get a programme that night for that dance because I went in late.

10 Q. Have you got any programme where you went with 2nd defendant? A. Not where his name comes in.

Q. Then what are the programmes you have? A. Dances which I attended before I met my husband and which I attended with him after I married him).

Q. You do not have a single programme of dances you attended after you started dancing with 2nd defendant? A. No. I do not think so.

Q. About April and December have you any dance programme of that period? A. No. In Nuwara Eliya we had no programmes and 20 on Sunday night dances there are no programmes.

Q. Why did the doctor leave you at the gate? A. That is his custom always.

Q. Why is there that custom you started that night from the portico why does he leave you in the morning hours at the gate and expect you to go home perhaps in the drizzle or dew instead of driving up to the portico? A. Because both gates are always closed.

Q. It is easy to stand up and open the gate? A. But you have to go round and open the other gate also and I did not want to disturb the servants. You have to wake up one of the servants to go and open both 30 gates for us and I did not want to do that. I used to walk up when he dropped me at the gate.)

Q. Is the gate padlocked? A. No. There is no padlock there is a latch.

Q. It is quite easy for Dr. Samahin to get out of the car open the gate drop you and then you could get one of the servants to run up and open the other gate? A. I did not want to disturb the servants and it was quite safe going up that little distance. Three male servants slept in the verandah a gardener and two boys.

Q. Is it not the fact that as soon as your car comes the servants get 40 up? A. No because I always go and switch on the light and then the ayah comes and opens the door.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
— continued.

Q. They do not get up when you come in? A. They might. The doctor used to always say he can take me right in but instead of having to reverse the car and things like that I used to ask him to drop me at the gate.

Q. On rainy nights? A. Then he comes right in and drops us at the portico.

Q. The medical dance is a very big function? A. Yes.

Q. Quite a large gathering? A. Yes by medical men and their friends.

Q. And you wear expensive clothes to dances like that? A. 10
Yes.

(To Court :

Q. Had you a wrap? A. Yes.

Q. In December it is the North East monsoon? A. I cannot say.

Q. After coming from the dance would you walk that distance in the cold north-east blowing? A. Yes.

Q. 2nd defendant is a doctor? A. Yes, but we were quite strong.

Q. Strong people could catch chills? A. We have not). 20

Q. Would you not ruin your sarees? A. We do not drag our sarees on the ground. It is two or three inches from the ground.

Q. At this period of time you were badly run down in health?
A. Not so bad as I was in October.

Q. But you were still run down in health, after effects of the renal colic? A. Yes.

Q. The doctor has told us that at one stage he found you badly run down and emaciated? A. Yes.

Q. Dr. Samahin knew all about that illness of yours? A. Yes, he knew about the renal colic. 30

Q. He knew that you had been asked to continue treatment for several months? A. Yes.

Q. You told us you continued Dr. Gunasekera's mixture for several months? A. Yes.

Q. And Dr. Samahin as a friend of the family would ask you whether you are feeling better and so on? A. He never asked me. I cannot remember.

Q. Normally would he ask you? A. He may have asked.

Q. And he would know the state of your health? A. Yes.

Q. You say there was no chance of your damaging your sarees? 40
A. No.

Q. You were perfectly prepared to get down from the car and walk in? A. Yes.

Q. And you go in and put the light on? A. Yes.

Q. You had to climb the steps? A. Three steps.

Q. All that done without the aid of a light? A. Yes.

(To Court :

Q. You had three men servants sleeping in that verandah who could easily open the gate and let you in? A. It did not strike me to wake them and I did not like to wake the servants up like that).

Q. I think you said that when you put the light the servants stood up on their mats? A. Yes.

10 Q. Then there was no need to put them up? A. But I never asked them.

Q. On this occasion when you came in was the hall light on? A. Yes, and the main door was open.

Q. So that you could see the light from the hall on to the road? A. Yes but it was shaded.

Q. Did you not then realise that there was something wrong? I thought that the 1st defendant must be up and about. He said he had a heavy brief? A. Yes.

20 Q. And you thought he was studying it? A. I do not know I thought it was so.

Q. He studies in his room? A. No sometimes in the drawing room on a settee with his legs up.

Q. You have seen that? A. Yes.

Q. Even when he was at home and you returned late the front door would be closed? A. Yes.

Q. Seeing that the light was thrown on to the road you thought that the door was open? A. Till I came in I did not know that the door was open and as soon as I went in the door was open and the cookie came out crying and she said master has gone away.

30 Q. You noticed you said when the car stopped that there was a light thrown on to the road? A. When I was going in through the gate I saw the light.

Q. When you got down from the car you realised that there was something unusual? A. I was wondering about the light.

Q. Because it was not usual? A. Yes.

Q. And you thought your husband was studying? A. Yes. Then as soon as I got in the servants came up and said that the master had left with the child.

40 Q. Dr. Samahin generally waited till you put the switch on? A. Yes. We did that. As the woman said that master had left we at once put the switch.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

Q. Why put up the switch? A. To show the doctor that we had come into the house. I was listening to the servants and then my sister put on the switch.

Q. That was a signal that the doctor should leave? A. Yes. Then I went into the baby's room because I wanted to make sure and I found the whole place in confusion.

Q. On your return from the Police dance you had left the house and you felt certain that your husband would come after you to fetch you back? A. Yes.

Q. Here your husband left the house did you try to get in touch with him? A. He had taken all the furniture and gone away. He had taken everything and taken my child too and everything that was in the child's box was thrown on the ground and naturally I thought there was no use going behind this man now.

Q. Is it not the fact that Dr. Samahin was called into the house that day? A. Certainly not. The first time he knew of it was when I phoned him the next day.

I returned from the dance between 2-30 and 3.

Q. Not later? A. No. We were at home at about 3 o'clock.

Q. Where was your father then? A. Kandana. 20

(To Court :

Q. The next thing you say you knew was that you were with your father at Kandana? A. Yes.

Q. In whose car did you go? A. In my brother's car.

Q. Who went? A. My brother, sister and I.

Q. At what time did you reach? A. I cannot say.

Q. Were you unconscious? A. I cannot say but I did not know anything that was happening after that.

Q. You had lost your child and lost your husband and he had taken away all the furniture? A. Yes. All the furniture he was using). 30

Q. He says he took his furniture? A. He took my writing table and my toilet table. Those were given to me by my father.

Q. Is there a toilet table in your room? A. Yes that was left behind but the toilet table he was using was also mine given to me by my father.

Q. And what he took away was the furniture that had been in the room he was occupying? A. The furniture that was in his room, my baby's room, in his office room and in the guests' room.

Q. At that time he had his writing table in his bed room? A. No. 40

Q. From the guests room he took a bed? A. Yes.

Q. Leaving the bed that was in his room? A. Yes I think so.

Q. The bed that was in his room was a twin bed, he left that and took the bed from the guests' room? A. Yes and all the things that belonged to the baby even the toys that I bought, the Santa Claus toys that I had bought for baby.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

Q. Apart from that he took the furniture from the office room the bed from the guests' room leaving a bed in his room behind and the refrigerator? A. Yes.

Q. That refrigerator was bought by him? A. Yes.

I was in Kandana at about 4-30. I was there till about 7 or 7-30 a.m.

10 Q. You came back with your father? A. Before father goes my brother had to go to work.

Q. As a matter of fact your brother was still in his dress clothes?
A. That I have no recollection.

Q. And he had to go to Bambalapitiya and change? A. May be I have no recollection.

Q. You got back to Colombo and did you ring up your husband?
A. No.

Q. Did anybody ring him up? A. I do not know if anybody else did so.

20 (To Court :

Q. He parted from you with affection the night before? A. Yes.

Q. Something had happened would not your normal reaction be to have tried to get in touch with him? A. I did not know where he had gone. The only place I could think of was the Police station.

Q. Did you do that? A. No.

Q. At this stage you were an innocent party, you had done nothing wrong and your husband had parted with affection the previous night and you got a shock when you came back. Granting all that why did you not try to effect contact with your husband? A. Because I did not know
30 where he had gone and the last place I would have thought he would have gone was to his mother's.

Q. Why did you not telephone to his mother? A. I had nothing to do with his mother).

Q. You left your husband and baby well.....? A. I did not know where he would be. I tried two or three places where I thought he would have gone to. I did not think he would have gone to his mother's.

Q. Which are the places? A. I tried Marcus Silva and I phoned to the Namasivayams, that is all.

Q. You did not think of ringing up his mother's house? A. No
40 because I had not the faintest idea he would be there.

Q. Did you not try to get back the child? A. After my father came he tried everybody and it was only after the letter came that I knew that he was at his mothers.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

Q. What was your objection to ringing up his mother granting that you were not on good terms with her? A. I did not think that my husband would be there because he had so much to say about his mother and brother.

Q. You had no reason then to suspect that he was acting on the instigation of his mother? A. No. I did not think so, but after the letter came I knew that his mother and brother were at the bottom of this.

Q. Assuming then that you had no reason to suspect that the mother was instigating the son why did you not ring her up? A. Because I did not know that he had gone there. He was annoyed with them. 10

Q. Why did you not try it? A. I did not give it a thought and I did not think that a man who had said don't send my child to my mother's, would have gone there.)

Q. You realised that wherever he went he would have to take the child and that some provision would have been made for the needs of the child? A. He left the ayah behind.

Q. So that wherever he went it would have been a place where the child would have to be looked after without an ayah? A. Yes but he was there and the child was used to him.

Q. Did it not strike you from the fact that he left the ayah that he 20 was taking the child to a place where there was a woman? A. It did not strike me at that time I was too confused. I did not want to get into communication with his mother. I did not think he would have gone there. I never dreamt that he would have gone to his mother's after all that he had said about his mother.

(To Court :

Q. You rang up the Namasivayams? A. Yes. Then I phoned up Marcus Silva and another friend of his.

Q. Why did you not get someone then to ring up the mother's house? A. It did not strike me). 30

Q. You say that it was after you got the letter that you realised it was at the mother's instigation? A. Mother and brother.

Q. And so you wrote to him that his enemies had captured him? A. Then my father sent my uncle Dr. de Costa to see his mother.

Q. That was before the reply was sent? A. Yes that evening.

(To Court :

Q. As soon as you got P2 you knew where the baby was that she was at Mrs. Alles'? A. Yes.

Q. Why did you not go yourself or send someone and demand the child? A. I did not go because I had been advised not to go. My 40 husband had asked me never to go to his mother's house and I was still obeying his orders. Then my father said it is better that someone should go and see the lady and Dr. de Costa was sent.

Dr. de Costa is not on my list).

Q. You say you did not go to his mother's place because you were still obeying his orders that you should not go to his mother's place?

A. Yes.

Q. 1st defendant's orders were given because of the fact that his mother had insulted you in your place in April or May? A. Yes.

Q. Now when he had gone to his mother's house you felt that like Casabianca you should not disobey his orders? A. I did not think of Casabianca he had ordered me not to go and I did not go.

10 Q. In spite of the fact that the whole position had changed, but still because he told you not to visit his mother you obeyed his orders and did not go? A. Yes.

Q. Although it meant that you could not go and see your child? A. Yes.

Q. Instead when you came back to Colombo you rang up Dr. Samahin? A. Yes. To tell him the situation.

Q. You did not expect that the 1st defendant was with Dr. Samahin? A. No.

Q. At that date you had not yet received this letter P2? A. No.

20 Q. So that you did not know that your husband was making any suggestion against you in connection with Dr. Samahin? A. No I did not know.

Q. At the time you rang up Dr. Samahin the letter had not come? A. No.

Q. And you had not the faintest idea that he was coupling your name with the doctor's? A. No.

Q. Dr. Samahin has told us that you rang up and wanted him to come over and that he went? A. Yes.

30 A. To tell him what 1st defendant had done.

Q. I am putting it to you that the first telephone message you sent that morning was to Dr. Samahin? A. You are not wrong. If you say that I telephoned to him to tell him what 1st defendant had done.

Q. I put it to you that you sent out the first message to him because you knew even before you received P2 what had precipitated that course?

A. Certainly not, I did not know anything about it. I phoned him up because he had a car and he can do a little knocking about and find out.

(To Court :

40 Q. You wanted to find out where the baby was? A. Yes, I said you can find out where the baby and 1st defendant had gone to and in the meantime I phoned up those two places I mentioned.)

Q. Dr. Samahin in response to the message came in a short time? A. Yes.

No. 31
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

Q. He told us he came there at about 8 or 9? A. Yes that is right.

Q. And he had no suggestion to make as to where the 1st defendant would be? A. I cannot tell you what happened I started crying and he did not talk much he went away.

Q. You telephoned to him in order to tell him to knock about and find your husband? A. Yes, he knew all about it on the telephone and he came home and wanted to see for himself.

Q. He did not tell you anything about his having made any attempts to trace the 1st defendant? A. No. 10

Q. Nor did he tell you he was going out to trace him? A. No.

Q. How long did he stay there? A. About 15 minutes.

Q. Did you not tell him to go and find out where the baby was?
A. I do not know what he did, he went off.

Q. Certainly he did not talk much and he did not stay long? A. Yes.

Q. And he left before that letter came between 10-30 and 11?
A. He had come back after that.

Q. Dr. Samahin's evidence is that on that occasion he came there and the letter came while he was still there? A. Yes. 20

Q. He was cross-examined very closely about this question of the receipt of the letter and the time, he has not said any thing about his having come back? A. I cannot explain that.

Q. How many times did he come back? A. Only that day. He came back again that day and he was there when the letter came.

Q. When he was cross-examined he stuck to it that he was there when the letter came? A. Quite right.

Q. You know he did not mention a second return? A. I do not know what he said.

Q. Are you not bringing in a second visit in order to get over the 30 difficulty that he saw the letter? A. No.

Q. Why did he come the second time? To find out what else had happened. Did he then say he had been round the place looking for the baby? A. When he came there there was a lot of people and I did not go and talk to him. At that time I had not found out where they were. He was talking to my father.

Q. You came rushing back from Kandana and rang him up? A. I did not telephone to him at once I had a change and all that.

Q. And the first person you rang up was Dr. Samahin? A. Yes.

Q. And you rang him up to ask him to knock about in his car and 40 find the 1st defendant and the baby? A. Yes. I said you have a car you can do this for me.

Q. Dr. Samahin has told us definitely that between 8-30 and 9-30 he was there and while he was there you showed him the letter? —

Q. The first time he came you were all indoors and he looked about the place and did not speak to you, went off? A. Yes.

Q. He came the second time how long after he had left? A. I have no recollection.

(To Court :

Q. When he came back had you traced your husband? A. No.

Q. In fact you could not live without your baby? A. Yes).

10 Q. Then did you not rush out to Dr. Samahin and ask him have you found out where the baby is? A. No recollection.

Q. Nor did the doctor tell you he had not been able to trace them?
A. I heard him telling that to my father that he had been all over the place.

Q. Then did you not ask where and where he had been? A. No I was distraught.

Q. Did you not ask him where have you been? A. No I did not.

(To Court :

20 Q. Why did they not go to the most obvious place? A. They did not go there because 1st defendant had said a lot of things against his mother and that would be the last place he would go.

Q. Why not? A. Because I did not think of it. I was too confused, and dazed to think of anything.

Q. You told the court definitely that that when the doctor came back you did not still know where the doctor was? A. Yes.

Q. So that when he came back you had not received the letter P2?
A. Yes.

Q. So then the letter must have come when the doctor was still there? A. Yes and my uncle was also there.

80 Q. Any everybody read the letter? A. I gave it to my father.

Q. So that Dr. Samahin could make no mistake about the letter coming by post when he was there? A. I could not answer for Dr. Samahin.

Q. He was there somewhere in the verandah? A. I do not know where he was.

Q. Dr. Samahin's evidence was when he came there from the Orient Club you showed him the letter, you brought it from somewhere in the house? A. I cannot answer for him. I can answer for myself.

(To Court :

40 Q. Was it during his second visit or first visit that the letter came?
A. When he came the second time).

No. 34
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

Q. Did he not tell you when the letter came, now do not search for the child, we know where the child is? A. I said Stanney is at his mother's place and my father showed him the letter.

(To Court :

Q. You have heard the evidence. According to him he was there only once and when he was there the letter came why did you not then correct that? A. I drew the attention of my proctor and he said leave it).

Q. Dr. Samahin you told me when he came the second time he reported that his efforts were unsuccessful? A. Yes. 10

Q. You got the letter while he was there? A. Yes.

Q. Then you would have told him do not search anymore? A. When I got the letter I was delighted.

Q. And you must have told the searchers there was no need to search? A. Yes I said the baby is at his mother's. And they all saw the address on the top of the letter.

I did not show Dr. Samahin the letter as soon as I got it I gave it to my father and I do not know what happened after that.

I only said Daddy baby is with 1st defendant's mother.

Q. After that date have you had any contact with Dr. Samahin? 20
A. No.

Q. He never came to see you? A. No.

Q. You have never been to anybody's house where he was? A.
No.

Q. You never met him in fact? A. No.

Q. Never written to him? A. No.

Q. Did he write to you? A. No.

Q. Did he come to see you when your child was born in the nursing home? A. No, he did not come.

Q. Did he send you flowers? A. I had heaps of friends that 30 called and sent me flowers but Dr. Samahin did not call or send me any flowers.

Q. From the 20th December you had nothing to do with him?
A. No.

Q. Your lawyers from that date always were looking after your affairs in this action? A. Yes.

Q. Will you tell me then why it was that you took all the trouble to telephone to Dr. Samahin to Dambulla? A. Because I wanted to get the date that my sister went to hospital, and I had told my lawyers that I could get that from the doctor. 40

Q. Dr. Samahin has told us he was in Colombo during the first week in April and you were in the nursing home and he would have known you were there? A. I do not know.

Q. Dr. Wickremasooriya was attending on you, who runs the nursing home? A. Mrs. Sirimane.

Q. She had been a nurse before? A. I do not know. I do not up to date know that. I did not ask her.

Q. The doctor never even rang up the nursing home? A. No.

Q. I take it there was a point in his keeping away? A. I do not know you ask that from him.

Q. Mr. L. M. Fernando used to come to see you regularly? A. He came on one occasion.

10 Q. He knew of the birth of the baby? A. Yes of course.

Q. He is frequently at the Orient Club? A. I do not know.

Q. Is he a great friend of Dr. Samahin? A. They are good friends.

Q. They go regularly to the Orient Club? A. May be I do not know.

Q. Were you once taken to the Orient Club by Dr. Samahin? A. Never.

Q. Mr. L. M. Fernando is a good friend and has regularly visited your house? A. Yes.

20 Q. And you knew that he and Dr. Samahin were good friends and that both of them were frequently at the Orient Club? A. I do not know about the club. I know that the doctor was regularly there but I do not know whether Mr. Fernando went there regularly. I have never asked him about his club life.

Q. You do not know that Mr. Fernando frequented the Orient Club? A. No.

Q. How did you know that Dr. Samahin frequented the club? A. Because he says he is going to the club and so on.

80 A. Q. Mr. L. M. Fernando did not come as frequently as the doctor? No.

It is not correct to say that Mr. L. M. Fernando and his brother came frequently or that L. M. Fernando came when I was down with renal colic.

Q. Dr. Samahin stays at the club? A. Yes.

Q. You knew even before that that he always stayed in the club? A. No he stayed at home.

Q. You know that a good many of the doctors go to the Orient club? A. I do not know.

40 Q. Several doctors called to see you at the time? A. Dr. Attygalle saw me and Dr. Navaratne saw me.

Q. They were friendly calls? A. Yes. Dr. Attygalle used to come practically every day. Dr. H. O. Gunawardene did not come and see me.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

Q. You felt that Dr. Samahin had been told of the child? A. I do not know what he knew, he did not come and see me.

Q. You swear that he did not come and see you at Dr. Allen Rutnam's? A. No.

Q. When you rang up Dambulla did you say from where you rang up? A. I could not speak to the doctor.

Q. You rang up to get some information did you get it? A. No. And I said kindly give this message to the doctor. The doctor sent no reply.

Q. The second telephone message was to find out the same dates? 10 A. Yes I did not get the information.

Q. You telephoned from Colombo to Dambulla in order to find out the dates? A. Yes.

Q. You left a message, you got no reply? A. Yes.

Q. The next time you went to Rutnam's you rang up again? A. I was there for about three weeks when baby was ill.

Q. The 7th of May is the first and the next is the 1st of June? A. I could not tell you the exact dates. I could not get the doctor on the phone again and I asked the man whether he gave the last message. He said he had and I asked him to remind the doctor about it and ask him 20 to send a reply. I got no reply.

Q. Can you explain why Dr. Samahin who had been so friendly with you did not send a reply? A. I cannot say.

Q. By that time Dr. Samahin had not become a party to this action at all? A. Well what about the letter. I think my lawyers got that information now from the doctor. I told my lawyers that I telephoned and they must have written and got it.

Q. The information was about the dates your sister attended the hospital? A. Yes.

(To Court :

30

Q. How is the date Merita went to hospital relevant? A. Her first operation was in October and I wanted those dates. October 1940. The second was when she was operated in February, 1941 the time my husband went to Jaffna.

Q. How is the October date relevant for your case? A. Because that was the time I was friendly with the doctor and I thought I might be asked questions.

She was under observation in February. That was about 10 or 15 days after my husband went to Jaffna. That was at the General Hospital.

Q. What was the necessity to spend a large sum of money on two 40 trunk calls to get this information? A. I thought I could get it quicker.

Q. How would it have helped you? A. I would have got it quicker.

Q. You did not telephone four times? A. No.

Q. Can you explain the other two trunk calls? A. I have since found out and I have traced the people who phoned).

Q. You say you telephoned because it was quicker? A. Yes.

Q. You got no reply? A. No.

Q. Then you telephoned again? A. Yes.

Q. Still got no reply? A. No.

Q. After the first message you did not think of writing or getting your lawyers to write? A. I did not tell them.

10 Q. Was there any urgency about it? A. I thought I had better get all the information to be given to my lawyers.

Q. You felt it was urgent? A. Yes.

Q. When you got no reply you still did not ask you lawyers to write to him which would have been the quickest method? A. No.

Q. Why did you not write? A. I have never written to him.

Q. Why did you not write and say my lawyers say this information is necessary please send it? A. It did not strike me.

Q. In what way did you think it relevant that you should get that information even before answers were filed? A. I thought it would
20 be relevant.

Q. So relevant that you had to get it from Dr. Samahin quickly? A. I did not think of getting it in any other way.

Q. How is it relevant? A. I thought it would be necessary for my case.

Q. How? A. Because that is the time we met the doctor quite often.

Q. How long was Merita under observation from 15-2? A. About one week or 10 days.

While Merita was in the hospital Mrs. Waldo Sansoni was there and
30 the two girls and my aunt.

Q. The person who could have told you the date she was in hospital would be your sister herself? A. She had no recollection of it.

Q. Your sister has no recollection of the dates? A. Yes.

Q. The hospital would have records of those dates? A. Yes but I did not know anybody in the hospital.

Q. Who paid the bills? A. My father.

Q. By cheque? A. Yes and we asked for the counterfoils and he said he did not have them.

Q. He is a business man? A. Yes.

40 Q. Any hospital payment has got to be made on the date of admission? A. Yes.

No. 84
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

Q. They do not admit patients until deposits are made? A. I do not know that.

(To Court :

Q. Do you mean to suggest your father did not have his counterfoils for 1940 1941? A. Yes he said he did not have them. I remember asking him at dinner and he said that he will go to the office and find out and he said when he came he did not have them.

Q. Did he say what happened to them? A. He said he had destroyed them or something).

Q. You knew the month? A. Yes. 10

Q. And you thought you had better get in touch with Dr. Samahin by telephone rather than try the hospital? A. Yes.

Q. After this action was filed an agreement was arrived at whereby you could take the child out on certain dates? A. Yes.

Q. Is it correct that on one of those dates you went with Dr. Samahin to the Sundae Tea Rooms with the child? A. I have never met Dr. Samahin. I had made a promise to my husband that the child would not be shown to him or to Mr. L. M. Fernando and also that I would not take the child to my home.

Q. Is that all you undertook to do? A. Not to take the child 20 to my father's home also.

(To Court :

Q. You were allowed the privilege of seeing the baby at Dr. Rutnam's house twice a week? A. Yes.

Q. You had also agreed that you could take the child out? A. Yes.

Q. Did you take the child to the Sundae Tea Rooms? A. Yes, to give the child a lunch.

Q. Do you deny you met the 2nd defendant there? A. Yes.)

Q. Without meeting him did you see him there? A. No. 30

Q. Did the 2nd defendant take you to the 20th Century Club? A. No I do not know where that club is.

Q. You know Dr. Salgado? A. No.

Q. You attended his wedding? A. No.

Q. Dr. Salgado of the Agricultural Department? A. No I do not know him.

Q. Not even by sight? A. No.

I have no recollection of having gone to his wedding.

Q. You do not know Dr. Babapulle? A. No. I know his brother Cyril. I met him at Dr. Rutnams and I was introduced there. 40

Q. You heard the evidence given by Dr. Babapulle? A. Yes.

(To Court :

Q. Is there a cinematograph at Bandarawela? A. Yes.

Q. What are the times of the performances? A. We have always been to the 6 o'clock show. I think there is one at 3 and one at 6. I do not know whether there is one later than 6. It finishes at 8 or 8-30. From Mrs. Solomons' it is about two miles to the show. I went to the pictures with Mr. and Mrs. Jayewickreme. Whenever I went I went with them. While at Bandarawela I had been to the pictures twice.

10 Q. You went with the Jayewickremes? A. Yes, Mrs. Jayewickreme used to come for us. They come to the bottom of the hill and pick us up. After the pictures we went once to Mrs. Jayewickreme's house and once they took us to the hotel for dinner. After pictures and the dinner it must have been about 10 o'clock when I went back to the Solomons'.

Q. When were those two visits? A. Before Easter.

Q. How long before Easter? A. Soon after we went once and about 10 days after again.

20 Q. Do you remember the picture you saw? A. I have forgotten the name. I think we went to the first picture four or five days after we went to Bandarawela. Even the second picture I cannot give the name of it.)

Q. From the pictures you got back to the Solomons' house? A. Yes.

Q. You heard the evidence of Dr. Babapulle? A. Yes, that is false.

Q. You suggested that a cheque had been given to Mrs. Babapulle? A. Yes my proctor told me that.

30 Q. Are you still persisting in the allegation of yours. You asked for summons on the Bank Manager. Are you producing that cheque dated 17th December? A. My lawyers would know about it, I have not spoken about it to them.

Q. You have asked for summons on the Chartered Bank Accountant or Manager to cause that cheque to be produced? A. I do not know anything about it. I have not spoken about it to my lawyers.

Q. Did you not realise that you were making a serious allegation? A. I thought my lawyers had all the information and I said carry on.

Q. First there was an allegation against Mrs. Alles that she had given a bribe, you know that she is a well to do lady? A. Yes.

40 Q. Her husband was well to do and she is also well to do? A. I heard that in court.

Q. Apart from that you are very close relations, your father is her first cousin? A. Nephew.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

Q. Mrs. Alles is a Mrs. Abeysundere and so was your father's mother? A. Yes.

Q. Your father's mother was well to do? A. I do not know.

Q. You do not know whether your father got anything from his mother? A. I do not know.

Q. You know that the Alles' are fairly well connected people? A. Yes.

Q. And you made that allegation that she had offered a bribe? A. Yes.

Q. You know that Babapulle is a wealthy man? A. I do not know anything about him.

Q. You know Dr. Cyril Babapulle? A. Yes I was introduced to him at Dr. Rutnam's.

Q. You knew that Dr. Babapulle is practising here as a veterinary surgeon? A. I know that after he gave evidence.

Q. Did you not know that he had English qualifications? A. Not till he said so.

Q. Before you made that allegation of a bribe did you try to find out whether he was a well to do man? A. No.

Q. You did not bother? A. No. 20

Q. You thought it was perfectly alright without finding out his means to make that suggestion? A. Yes.

Q. Are you still making that suggestion? A. Yes.

Q. You still say he has given false evidence because your mother in law gave him a bribe? A. Yes.

Q. And that in spite of the fact that all the counterfoils and her bank statement produced in Court? A. Yes.

Q. Did you know that a summons had been served on Mrs. Solomons'? A. Yes she told me when she met me at the shop.

Q. When was that? A. A day before her daughter's wedding. 30

Q. You and your father called on her? A. No I called on her because she had invited me for her daughter's wedding. This was in December last year.

Q. Miss Solomons married on 2nd December? A. Yes.

Q. You went and saw Mrs. Solomons here in Colombo? A. Yes, about the 3rd December.

Q. The trial was started on the 10th December? A. Yes.

Q. Mrs. Solomons told you she had been summoned by Mr. Alles? A. Yes.

Q. Did you ask her what is it? A. I did not ask her one question because she had a lot of visitors. 40

Q. Then she was quite healthy? A. Perfectly alright.

(Mr. Obeyesekere at this stage objects—hearsay evidence. I think the line of questioning is permissible).

(Mr. Amerasekera says he has no objection).

Q. You were preparing for this case? A. Yes for quite a long time.

Q. And your lawyers would have told you what they ascertained from the record who the list of witnesses were? A. Yes.

Q. They showed you the list and asked you who this person was and so on? A. They did not ask me all those details.

10 Q. Were you not curious to know what she was coming to say? A. No because there is nothing she could say. I thought she would come and give the number of days and so on. I knew that she had been served with summons. She told me so. That was the day before her daughter's wedding.

Luncheon Interval.

Signed R. F. DIAS,
D. J.

26th January, 1943.

MRS. MERLE ALLES :

20 Further Cross-examination.

Q. Your father and Mr. Solomons were very good friends? A. I do not know.

Q. Do you know who your father's friends are? A. No.

(Telegram 63 sent by Mrs. Solomons to Court—Mr. Wickremanayake draws the attention of Court to).

P26 of 20-2-41 read to witness.

Q. "I have heard nothing nor have I received any anonymous letters." That is in reply to a letter from you? A. Yes.

Q. He says he has not received any anonymous letters? A. Yes.

30 Q. Will you tell us why he said he had not received anonymous letters? A. Because I may have asked him.

Q. Had you received anonymous letters? A. No.

Q. Anonymous letters relating to what? A. Gossip in Colombo.

Q. Gossip about whom? A. About Dr. Samahin and I.

Q. You had heard that he had received anonymous letters and asked him whether it was correct? A. Yes.

(Mr. Wickremanayake draws the Court's attention that the summons taken out for service on Mrs. Solomons was served on her at Bandarawela, on the 12th on reissue after there had been a failure to serve on her in
40 Colombo,

No. 84
Plaintiff's
Further
Evidence
Merle Alles
Cross-
examination
—continued.

Q. When she came out for her daughter's wedding she was staying at Dickman's Lane—that is where you saw her? A. Yes.

Q. You told us that your husband kissed you good-bye that day?

A. Yes.

Q. When he went off by train that time to Jaffna did he kiss you good-bye? A. Yes.

Q. Dr. Samahin saw that too? A. Yes.

Q. Kissed you on the platform? A. Yes.

Q. Had he kissed you in front of people before this? A. He has.

Q. Quite frequently? A. Yes.

10

Q. You told us that several times when people were in your house he used to go to the Namasivayams or wherever it was and he kisses you on those occasions? Before he went to work did he kiss you? A. Always.

Q. He kissed you good-bye in the room before he came out? A. Yes or he would kiss me on the door step.

Q. He would kiss you good-bye? A. That was his habit.

Q. There were several occasions when he left the house with the Ludowykes? A. Yes.

Q. Miss Ludowyke has spoken to it and you have spoken to it? A. Yes.

Q. On those occasions also he kissed you? A. Yes.

Re-examined.

No. 84
Plaintiff's
Further
Evidence
Merle Alles
Re-
examination

Q. Your child was born on the 26th March last year? A. Yes.

Q. After that did you send for your proctor Mr. C. E. Jayawardena?

A. Yes, a day or two after.

Q. What did you ask him to do? A. I told him that I was very anxious to see the other child that they had not taken action and asked him to file action. I asked him to take steps to get my child.

Q. After that he took some instructions? A. Then he came again and asked some questions which I answered then he came one night with Mr. Albert Peries.

Q. He brought an affidavit on that day? A. Yes.

Q. It was read to you by Mr. Peries and you signed it? A. Yes.

Q. When did your father leave Merlton? A. Somewhere in November, 1940.

Q. You said he went to the estate?

(Mr. Wickremanayake objects to leading questions) St. Rita's, Waga.

(To Court :

Q. Your father is a widower? A. He is married again.

40

Q. Is his second wife living? A. Yes,

Q. Is he living with her? A. No. She is living on her own. (They are separated).

Q. When was that estate sold? A. Somewhere in November.

Q. After that where did he go to reside? A. He went to a house in Kandana.

Q. That is the house which you went to after your husband left you? A. Yes.

Q. Fairlight, Kandana? A. Yes.

Q. Your husband left for Jaffna in the beginning of February 1941?
10 A. Yes.

Q. And your sister continued to live with you? A. Yes. My father wanted to take my sister home but as my husband was going to Jaffna he said she could be there till he returned.

Q. When did she leave the house? A. On 26th August.

Q. Is it correct to say that your father took your sister away as a protest against the association of yourself and your husband with Dr. Samahin? A. Certainly not. It was because my husband had come back.

Q. You produce the snap P41 which was taken at Bandarawela?
20 A. Yes.

Q. After the lunch? A. Yes.

Q. Did you send those snaps to your husband? A. Yes. I gave him all the details of the trip.

Q. And they were returned to you by your husband? A. Yes.

Q. It appears in his letter dated 20-5-41 to you which is marked P45?
A. Yes.

Q. Who is Amara? A. She is Mrs. Jayawickrema. We call her that.

Q. Do you know that after this cook-woman Alice left your house
30 that she had got employment in the Sansonis? A. No.

Q. When did you first come to know that? A. When I first heard her evidence in Court.

Q. You had visited the Sansonis after your husband left? A. Yes. I know them very well.

Q. You now know that she was employed at the Sansonis? A. Yes.

Q. On how many occasions have you visited them after your husband left you up to the date of the trial? A. About three or four times.

Q. Did you visit the Sansonis after the trial began? A. On
40 Christmas day.

Q. You are very friendly with the Sansonis? A. Yes. In fact I call him uncle Waldo.

No. 34
Plaintiff's
Further
Evidence
Merle Alles
Re-
examination
—continued.

(To Court :

Q. Was that friendship of long standing? A. For a long time.

Q. Were the Sansonis your father's friends? A. Yes.)

Q. Did you at any time discuss this case with Mr. Sansoni? A. I did not discuss with him.

Q. Or with any member of the family? A. I did not discuss the case because he was one of the judges of this Court and I did not think it was a correct thing to do.

Q. Did you know he was not the trial judge? A. As he was a judge of the Court I did not think it proper to speak to him about it. 10

Q. You said you had drinks at several places? A. Ginger beer lemonade.

Q. Do you take a whisky? A. No.

Q. Cocktails, sherry or port? A. No. I take a little milk wine.

Signed R. F. DIAS,
District Judge.

No. 35.

No. 35
Plaintiff's
Further
Evidence
(Refusal of
Court
to hear
Dr. Theo-
bald)

Plaintiff's further evidence (Refusal of Court to hear Dr. Theobald).

MR. AMERESSEKERA wants to call Dr. Theobald.

MR. WICKREMANAYAKE objects. List filed after trial began. 20

I call upon Mr. Ameresequera to justify his action.

Mr. Ameresequera says when he was cross-examining Dr. Wickrema-sooriya he had an article by Dr. Theobald and put that to Dr. Wickrema-sooriya. Later when Dr. Attygalle came to the box the same article was put to him and it was objected to by counsel for the 1st defendant on the ground that he was a living author and was in Ceylon. He says the special circumstances which justify a departure is that Counsel was not aware that Dr. Thiagarajah was in the land of the living. Submits section 175 does not apply to experts.

I ask Mr. Ameresequera whether the medical experts who were instructing him were not aware that Dr. Theobald was not in the Island.

Mr. Obeyesekera has nothing to say.

Mr. Wickremanayake submits no warrant for limiting section 175 to non-expert witnesses. Submits that a party is not aware is no reason for relaxing the provisions of section 175. Dr. Theobald is a witness who has been in Ceylon for some years. Dr. Thiagarajah was aware of this. It would be a special circumstance if Dr. Theobald arrived in Ceylon after the trial began.

Mr. Ameresequera in reply.

ORDER

I am unable to agree with the submission that section 175 is limited to non-expert witnesses. The section starts with the words "no witness shall be called." Witnesses are either expert witnesses or non-expert witnesses. The words used in the section clearly include expert witnesses. I have already had occasion to construe section 175 twice in the course of this case. Admittedly Dr. Theobald's name is not on a list of witnesses filed previous to the commencement of this trial. Therefore in order to call this witness Mr. Ameresekera must rely on special circumstances. The only special circumstances urged are that he was not aware that when the article written by Dr. Theobald was submitted to him that Dr. Theobald was living or that he was in Ceylon. That may be. But Mr. Ameresekera has been instructed right through the trial by a Dr. Thiagarajah to whom reference has already been made. That doctor was in Court instructing Counsel for the plaintiff while the experts were in the box and he is now again attending Court in the company of Dr. Theobald. It is admitted that Dr. Thiagarajah was aware that Dr. Theobald was in the Island and surely it was his duty to inform Counsel when submitting to him an article written by Dr. Theobald that the author himself was in the Island. But I hold that his failure to do so to Counsel for the plaintiff does not amount to special circumstances. There must be a limit to the leading of evidence in this way. I refuse the application.

Signed R. F. DIAS,
D. J.

No. 36.

Plaintiff's further evidence.

DR. E. F. FERNANDO, M.R.C.S. (Eng.), L.R.C.P. (Lon.) Sworn :

I was practising in London. I am Medical Officer to the Essential Service Labour Corps Camp (abbreviated as E.S.L.C.). Before that I was practising in London. I became Medical Officer to the E.S.L.C. this year. I was in the department for one year before I became Medical Officer to the E.S.L.C.

Q. You know the plaintiff in this case? A. Yes.

Q. As a matter of fact you were called in to attend on her somewhere about the 25th March last year? A. Yes.

Q. That was where, doctor? A. At Kandana.

Q. Were you practising there? A. I was acting for the Medical Officer in charge of the Tuberculosis Sanatorium.

Q. You remember, doctor, at what time you were called? A. About 8-30 p.m.

Q. You went to see the patient? A. Yes.

No. 35
Plaintiff's
Further
Evidence
(Refusal of
Court
to hear
Dr. Theo-
bald)
—continued.

No. 36
Plaintiff's
Further
Evidence
Dr. Fer-
nando
examination

No. 36
Plaintiff's
Further
Evidence
Dr. Fer-
nando
examination
—continued.

Q. Where was she at the time? A. In the house; in her father's house at Kandana.

Q. What did you find? A. She was in labour.

Q. What had happened? A. I made an examination and found that labour had advanced the os was practically half dilated.

Q. And the labour commenced? A. I found the membranes ruptured.

Q. And the fluid gone altogether? A. A good part of it was there still.

Q. What did you advise? A. She said Dr. Wickremasooriya¹⁰ was her doctor and I asked her to get in touch with him. I got in touch with Dr. Wickremasooriya and he told me as the labour had proceeded so far it was safer to see the labour through at home.

Q. Did you attend to her? A. The lady preferred to come to the nursing home in Colombo, as she was unprepared to have the labour at home.

Q. You were not their doctor? A. No.

Q. What did you understand by that? A. That she had made no preparations at her home as she was expecting to have her confinement in the Nursing Home.

20

No. 36
Plaintiff's
Further
Evidence
Dr. Fer-
nando
Cross-
examination

Cross-examined by Mr. Obeyesekera. Nil.

Cross-examined by Mr. E. G. Wickremanayake.

Q. This is the first time you attended on this lady? A. Yes.

Q. You went there and found labour had begun? A. No.

Q. It is not unusual for the membranes to rupture after labour begins? A. No.

Q. As a matter of fact it frequently happens that it happens at the first stage when labour has begun? A. Yes.

No. 36
Plaintiff's
Further
Evidence
Dr. Fer-
nando
Re-
examination

Re-examined.

Q. At what stage do the membranes rupture? A. Pardon. 30

Q. What is the first sign? A. Pains in the back and show.

Q. Then what happens next? A. Pain increases.

Q. In the normal labour case when do the membranes rupture?
A. At the end of the first stage.

Q. That is when the child is about to come? A. Yes, out of the os.

(To Court :

Q. And nature has provided that fluid in order to ease the passage of the child into this world? A. Yes.

Q. Are there cases where the membranes are ruptured before the⁴⁰ labour commences? A. Yes. When the fluid has escaped and there is no fluid enough to lubricate then it is a dry birth.)

Signed R. F. DIAS,

D. J.

DR. P. R. THIAGARAJAH affirmed, L.M.S. (Ceylon), L.R.F.P. & S. (Glas.), M.R.C.S. (Edin.) with Obstetrics as my specialty F.R.C.S. (Edin.) with Gynæcology as my specialty and F.R.C.O.G. (Great Britain) Post Graduate Government Scholar affirmed :

No. 30
Plaintiff's
Further
Evidence
Dr. Thiaga-
rajah
examination

Q. How long have you been in practice? A. From 1928.

Q. You are now attached? A. To the De Soysa Lying-in-Home.

Q. Who is the head of that? A. We have got a medical superintendent Dr. S. Thiagarajah then we have the Senior Obstetrician Dr. Navaratnam, then we have got Dr. Wickremasooriya.

10 (To Court :

I am junior to them).

Then we have got Dr. Caldera. Then myself.

Q. You have been in Court Dr. Thiagarajah when Dr. Wickrema-sooriya, Dr. Attygalle and Dr. Frank Gunasekera gave evidence? A. Not when Dr. Frank Gunasekera was here.

Q. You were here when expert evidence was given? A. Yes.

Q. The case for the plaintiff is this: She says she had her last menstrual period on the 12th July? A. Yes.

Q. She had relations with her husband on the 9th August? A. 20 Yes.

Q. Her periods are irregular? A. Yes.

Q. Her child was born on 26th March of the following year? A. Yes.

Q. What would be the notional foetal existence of that child? A. Calculating from the last menstrual period 12th July, 257 days. Calculating from the last menstrual period the duration of that pregnancy is 257 days.

Q. Would the child born on the 26th March have the characteristics of a fully developed child? A. Yes. Could have.

80 You heard Dr. Wickremasooriya's evidence.

Q. Would those characteristics be present in this child who had a notional foetal existence of 257 days? You cannot say No. You cannot say this child could not have had those characteristics. When you know the exact date of fruitful coitus how do you reckon the duration of pregnancy? A. In every case of pregnancy the only recognised method of calculation of pregnancy is from the first date of the last menstrual period. We do not take the date of coitus.

Q. Even if it is known? A. If you know precisely that a couple had one particular intercourse even it does not follow that insemination 40 would have taken place on that very day.

(Evidence put to witness).

Q. What do you say to that? A. I agree with Dr. Wickrema-sooriya's evidence.

No. 36
Plaintiff's
Further
Evidence
Dr. Thiaga-
rajah
examination
—continued.

Evidence put to witness. I do not think I can fully agree with that. I maintain that as mentioned in Taylor that a child presents characteristics of a full term child any time after the 36th week up to the 40th week that is why he says it is difficult to make out a child..... The child has formed the characteristics of a full term child in the 36th week. The subsequent development is in growth, weight, not in characteristics.

Q. You say 36 weeks calculated from what date? A. From the last menstrual period.

In all my evidence I reckon from the last menstrual period that is the only recognised standard known. 10

Q. All the tables and statistics are on that footing? A. Entirely on that footing.

Q. When you say a nine month child or a 10th month child you say the 9th month and 10th month are calculated from the last menstrual date? A. Yes.

Q. That is the first date of the last menstrual period? A. Yes.

Q. If this child was a full term child what are the possible limits in which this child could have been conceived? A. A full term child or a child presenting the characteristics of a full term child.

Q. When do you say that child would have been conceived? A. 20 For all practical purposes a fully developed child can be conceived any time 252 to 280 days back from the date of delivery.

Q. June, 19th to July, 20th? A. Yes.

(To Court :

Q. The difficulty there is caused by the date 11th July? Could a child have been conceived on the 9th June with menstruation on the 12th July? A. I would not call it menstruation. She will have a flow of blood, which for all practical purposes the patient would say was menstruation.)

Q. Assume the woman has conceived on the 19th June? A. 30 The lining of the uterus is not completely converted into the endometrium or the lining of the uterus wall. That is there is still a portion of it and some secretion of the ovary flows into this endometrium.—ordinarily menstruation.

(To Court :

Q. Assuming 12 July is suspect in your calculations what would you say? Would the child be a full term child? A. Meaning?

(Mr. Amerasekera says he will come to that point in due course).

Q. You say the dates are between the 19th June to 20th July? A. Yes. 40

Q. In this case you have heard the evidence of Dr. Wickremasooriya who says that he had asked the plaintiff to get ready for her confinement in the middle of April? A. 18th April— Yes.

Q. But the child as a matter of fact was born on 26th March therefore about two or three weeks before the expected date? A. Yes.

Q. Is that possible? A. Any child can be born.

Q. In this particular case Dr. Wickremasooriya says there was a premature rupture of the membranes? A. Yes.

Q. A premature rupture would.....? A. Generally indicates premature delivery.

Q. That is delivery before the period? A. Yes. Automatically the implication is the labour is premature. Normally the membranes ought to rupture at a certain time.

Evidence put to witness.

Q. Would that account for the delivery of this baby before the due period? A. If premature rupture of the membranes took place 3 weeks before the expected date of delivery the birth can take place a few hours later or a few days later after the rupture of the membranes or it may go on till the full term.

Q. If that is so if the child had been delivered before the due date by about three weeks would it make a difference to the dates you have given 19th June and 20th July? A. In what respect?

20 Q. In discovering the limits of conception because? A. You add three weeks to the 19th June and 20th July.

(To Court :

Q. If the child was due in April and owing to the premature rupture of the membranes the child which should have been born in April came into the world on the 26th March would it have signs of full development? A. I would not swear and say it would not).

Q. You asked us to add three weeks to 19th June and 20th July? A. Yes.

Q. When you add the three weeks you get the dates 10th July and 30 12th August? A. Yes.

Q. Therefore would you in this particular case place the limits of conception between the 10th July and 12th August? A. Yes. Because the child born between the 36th and 40th week calculating from the last menstrual period will for all practical purposes show the characteristics of a full term child. Therefore this child will have those characteristics.

Q. You heard the evidence of Dr. Wickremasooriya that the first child of the plaintiff weighed about 7 lbs. at birth? A. Yes.

Previous evidence.

40 Q. If the weight of the first child was 7 lbs. and the weight of this child was 6½ what conclusion would you draw from that? A. Generally speaking subsequent babies are heavier. That is in normal people.

No. 36
Plaintiff's
Further
Evidence
Dr. Thiaga-
rajah
examination
—continued.

Q. If it can be established that the first child was nearer 7 lbs. and that this child is proved to be $6\frac{1}{2}$ lbs. the only inference I can draw is that the child in virtue of the fact that it was $6\frac{1}{2}$ lbs.—what I contend is that if this child had gone on further it would have weighed more. It is suggestive of delivery before time? A. Yes.

(To Court :

Q. Did you suggest this question to Counsel when Dr. Wickrema-sooriya was in the box? A. I do not think).

Q. You say that the fact that the membranes ruptured prematurely is frequently associated with delivery before the expected date? A. 10
How did you word it.

Question repeated? A. The moment you use the word premature it means premature delivery. Normally labour must ensue and the membranes must rupture thereafter.

Q. Is it possible the child could have been conceived between the 10th July and 12th August? A. Yes.

XXD by Mr. Obeyesekera : Nil.

XXD by Mr. E. G. Wickremanayake.

No. 36
Plaintiff's
Further
Evidence
Dr. Thiaga-
rajah
Cross-
examination

Q. Your qualifications doctor are L.R.C.P. & S. (Edin.) F.R.C.S. also Edinburgh? A. Quite right. 20

Q. D.R.C.O.G. that is the diploma granted by the College of Obstetricians to the ordinary practitioner? A. I thought you have been badly misinformed.

Q. Is it so or not? A. No.

Q. It is obtained after an examination? A. Quite right.

Q. And there is an examination for the M.R.C.O.G.? A. I do not agree with you.

Q. You obtained the Diploma R.C.O.G.? A. Yes.

Q. Thereafter you sat for the examination M.R.C.O.G.? A. Quite right. 30

Q. And failed? A. No. That is perfectly incorrect.

Q. What happened to the examination? A. The membership examination is given to people who after some considerable time having held a staff appointment that membership is given either after election or after examination. I happened to be in England. I had not held a staff appointment. I was permitted to sit for the examination. The war came on.....

Q. You sat for the degree M.R.C.O.G.? A. I think I made it clear to you.....

Q. Do you say you have not failed the examination? A. I have 40
not failed the examination.

Q. You have not got the degree? A. No.

Q. Were you successful? A. I was.

Q. Then why have you not got the degree? A. The membership is conferred after some time during which period you have occupied some staff appointment in a Gynæcology and Obstetrician Institute. I have not applied for it.

Q. The F.R.C.O.G. is the fellowship conferred on persons who have held staff appointments as an honorary degree? A. Yes.

Q. That is the degree held by Dr. Wickremasooriya? A. Quite right.

Q. Held by Dr. Attygalle? A. Quite right.

10 Q. By Dr. Navaratnam? A. Yes.

Q. And Dr. Theobald whom you wanted to call? A. Yes.

Q. Do you admit that they know more than you? A. I do.

Q. You will admit that Dr. Attygalle sat for the M.R.C.O.G.? A. Barring Dr. Attygalle.

Q. Dr. Attygalle and you sat for the M.R.C.O.G. at the same time? A. I did.

Q. Did he sit for it? A. I think he must have.

Q. He said he was the only person who passed the examination? A. What he said was not correct. I will give you the presidential speech 20 delivered by the President of the Royal College of Obstetricians and Gynæcologists where it is expressly laid down there is no distinction whatsoever between the examination for the diploma and for the membership.

Q. You have not been given any degree or diploma beyond the D.R.C.O.G. because you had not the necessary obstetric experience? A. That time.

Q. You said the M.R.C.O.G. was not conferred because you had not the necessary obstetric experience? A. I was not on the staff of a gynæcology or lying in home at that time. When I sat for the examination I was a house surgeon. My last substantive appointment 30 was house officer, general hospital and lying in home.

Q. Prior to that what was your appointment? A. House surgeon.

Q. Where? A. General Hospital, Lying-in-Home.

Q. Prior to that? A. I was only three years in service before I went to England. I am talking of 1932.

Q. You passed out originally in Ceylon? A. Yes.

Q. You passed out from the local medical college? A. Yes.

Q. When was that? A. 1928.

Q. After that you got an appointment? A. I was 3½ years in 40 the medical service as house surgeon of the General Hospital, house surgeon to Dr. Lucian de Zilwa and house surgeon Lying-in-Home.

Q. Your bias was obstetrics? A. Yes.

Q. You went to England when? A. 1933.

No. 36
Plaintiff's
Further
Evidence
Dr. Thiaga-
rajah
Cross-
examination
—continued.

Q. And you were there trying to get better qualifications till what time? A. I was there for 4 months and I returned in 1933 to Ceylon.

Q. Then you went back? A. I was there 1 year and 9 months.

Q. When did you finally come back? A. 1934, November.

Q. What appointment did you get then? A. By then I had got the F.R.C.S., M.R.C.S. and all the other degrees.

Q. Where were you appointed? A. Assistant Surgeon, Kurunegala Hospital.

Q. Now that is a general hospital with no particular gynæcology or obstetrics? A. Yes. 10

Q. Your practice there was a general practice? A. General surgeon. I was there only two months.

Q. From there where were you sent to? A. Surgeon Jaffna Hospital.

Q. There too the hospital is a general hospital? A. Yes with midwifery.

Q. You were surgeon at that hospital and your work there was general surgeon? A. Yes, including gynæcology.

Q. How long were you there? A. 9 months.

Q. From there where were you sent? A. Badulla hospital 20 about the end of 1935.

Q. How long were you there? A. Till I came to Colombo in 1939, December.

Q. That also is a general hospital? A. Yes, with more gynæcology.

Q. There is no special section? A. No.

Q. What were you at the Badulla hospital? A. Surgeon.

Q. Your work was general surgeon? A. You are conveniently ignoring the experience I have in England.

Q. At Badulla your work was general surgeon? A. Yes plus 30 gynæcology and obstetrics.

Q. That is to say the few cases that came in to the hospital which is a general hospital? A. I do not understand your definition of few.

Q. There is no special section for gynæcology? A. I had a separate ward for gynæcology.

Q. How many wards were there in that hospital? A. 15 or 16.

Q. Of which one was devoted to gynæcology? A. Yes.

Q. How many surgical wards? A. 3 or 4.

Q. Not an equal proportion of surgical and medical? A. One gynæcological ward, 3 or 4 surgical. 40

Q. What was your rank at Badulla? A. Surgeon.

Q. Up to 1939 you were doing general surgeon's work with a little midwifery and obstetrics? A. Yes. Fair amount of gynæcology.

Q. How many surgeons were there in Badulla? A. One.

Q. If a physician wanted an operation done he would send for you?
A. Yes.

Q. Every operation there was performed by you? A. Yes.

Q. Take for instance forceps had to be used? A. I would do it.

Q. You came to the lying-in-home in 1939 December? A. Yes.

Q. You are there up to date? A. Yes.

10 Q. You will admit Dr. Wickremasooriya is better qualified than you? A. Yes.

Q. You will admit that Dr. Wickremasooriya's experience is infinitely greater than yours? A. I do not admit that.

Q. How long has he been in the Lying-in-Home? A. For a long time from 1925.

Q. That is to say about 18 years? A. Yes.

Q. Prior to that he had gone through the same course in a number of hospitals? A. I think so.

Q. He came to the Lying-in-Home from the Galle Hospital?
20 Yes. A.

Dr. Wickremasooriya has some unique qualifications and I am happy to find that I am in agreement with him.

Q. Dr. Wickremasooriya told us that before he came to the Lying-in-Home 18 years ago? A. Roughly about that.

Q. He said he was surgeon Galle Hospital? A. Yes.

Q. There would be also a fair amount of general surgical, midwifery and obstetrics? A. Yes.

Q. Dr. Navaratnam has even been longer in the Lying-in-Home?
A. Yes.

30 Q. He was at one time Superintendent of the Lying-in-Home until the post was abolished? A. Yes.

Q. He is now the Senior Visiting Obstetrician? A. Yes.

Q. He has been there for a period of how many years can you tell me? A. 4 or 5 years longer than Dr. Wickremasooriya.

Q. Dr. Navaratnam unlike you and Dr. Wickremasooriya even before he was appointed Medical Superintendent had been there in the Lying-in-Home as an assistant to Dr. H. M. Peries? A. Yes.

Q. So that altogether he has been in the Lying-in-Home as assistant and as chief officer for a period of over 20 years? A. I think so.

40 Q. His experience you will admit is infinitely more than yours?
A. Infinitely is a word I do not know.

No. 36
Plaintiff's
Further
Evidence
Dr. Thiaga-
rajah
Cross-
examination
—continued.

Q. You will admit Dr. Navaratnam's experience is the largest experience amongst obstetricians in Ceylon? A. In the number of cases he has delivered.

Q. In the number of cases he has dealt with delivery or otherwise?
A. As Obstetrician.

Q. Not as gynæcologist? A. No.

Q. He is now the chief? A. The senior Visiting officer.

Q. The next visiting obstetrician is Dr. Wickremasooriya? A. Yes.

Q. Next in seniority is Dr. Caldera? A. Yes. 10
I am the fourth and last in seniority.

Q. Dr. Attygalle is an F.R.C.S. England? A. In General surgery not in gynæcology or obstetrics.

Q. You I take it you do not agree with the general view that F.R.C.S. England is better than F.R.C.S. Edinburgh? A. If there was a diploma which the Royal College of Surgeons in England which qualified me for obstetrics and gynæcology I would have taken it.

Q. You cannot become a surgeon in the General Hospital without the qualification F.R.C.S. England? A. Yes, that was sometime ago.

Q. Is it considered essential to have the F.R.C.S. (England) to become a surgeon in the general hospital by the Government of Ceylon? A. It is a condition peculiar to Ceylon. Even a surgeon from America will not be admitted.

Q. Suppose an F.R.C.S. Edinburgh? A. Now they allow. Not a permanent appointment but you are allowed to work there.

Q. Why is that? A. This is a matter that has gone through 25 years ago and since then this matter has not been taken up for various reasons.

Q. That also does not presuppose that F.R.C.S. England is better? A. In general surgery. I quite agree. He attains a higher standard in surgery than F.R.C.S. Edinburgh in surgery but the F.R.C.S. man Edinburgh has this advantage he would have handled a scalpel. Unless he was a surgeon he would not be allowed to sit for the examination. A purely theoretical man can be an F.R.C.S. England.

Q. You say quite seriously that a man can take the F.R.C.S. England without ever handling a scalpel in his hand? A. I say it most emphatically without cutting up a live body.

Q. Dr. Attygalle is an F.R.C.O.G.? A. Yes.

Q. That is a diploma you are hoping to get? A. When I get older I hope that it will be conferred on me. When I do something outstanding in gynæcology or obstetrics it will be conferred on me.

Q. Dr. Attygalle is also a lecturer in the University of Ceylon in gynæcology? A. That is right.

Q. He is also the examiner in obstetrics and gynæcology? *A.* No. 36
 Yes. Plaintiff's
 Further
 Evidence

Q. Before which appointments were made applications were called for? *A.* No. Dr. Thiagarajah
 Cross-
 examination
 —continued.

Q. How did he come to be appointed?

(Mr. Amerasekera objects.

I uphold the objection).

Q. You are challenging the statements of Dr. Attygalle in this Court? *A.* To a great extent.

10 Q. You have also asserted here that you claim to know more on this subject? Do you claim to have better academical qualifications than Dr. Attygalle? *A.* In my own special subjects I do claim that. Because I am a F.R.C.S. in Gynæcology and M.R.C.P. in Obstetrics.

Q. That is despite F.R.C.O.G.? You claim to have more experience than Dr. Attygalle in Gynaecology and Obstetrics? *A.* I do not claim in Gynæcology.

Q. You have greater experience than Dr. Attygalle in obstetrics? *A.* Much more.

Q. The experience being? *A.* The experience gathered from 20 60,000 cases. In gynæcology he sees more cases and he should have more experience.

Q. Where do you see the 60,000 cases? *A.* Lying-in-Home.
 (To Court :

What is the place where gynæcology ends and obstetrics begins?
A. Obstetrics is a science pertaining to childbirth. Gynaecology are the abnormalities consequent upon childbirth—that is diseases peculiar to women.

Q. And associated with childbirth? *A.* Not necessarily associated with childbirth.

30 Q. Not anything that is preceding childbirth? *A.* Diseases peculiar to women and also associated with childbirth.

Q. Obstetrics is a part of gynæcology or gynæcology is a part of obstetrics? *A.* Every obstetrician has to be a gynæcologist. One can be a gynæcologist without necessarily being an obstetrician. He can be a gynæcologist without ever seeing a case of pregnancy.)

One can hold the post of gynæcologist in the General Hospital without ever seeing a pregnant woman.

Q. Do they not transfer cases from the Lying-in-Home to the General Hospital? *A.* Cases admitted for some other diseases as soon as they 40 get the labour pains they transfer to the Lying-in-Home.

Q. Do they not transfer cases from the Lying-in-Home to the General Hospital? *A.* For what condition?

No. 36
Plaintiff's
Further
Evidence
Dr. Thiaga-
rajah
Cross-
examination
—continued.

Q. Calling them gynæcology cases and sending them across? Suppose a woman in the Lying-in-Home tears—has a perennial tear when the instrument is being used? A. A perennial tear is a part of gynæcology. It is a common or garden operation.

Q. You do not send them to the Gnanasekeram Ward? A. No.

Q. A thing more serious than that? A. We did one this morning in the Lying-in-Home.

Q. You do not send them across? A. To my knowledge I do not transfer a single case of perennial tear.

Q. Suppose the wall between the anal canal and the vagina is ruptured? A. We repair it then and there.

Q. The term is peroneum? A. That is an operation done for perennial tear.

Q. You do it? A. Yes.

Q. You did it in the Lying-in-Home? A. Yes.

Q. No cases are sent across for the treatment of diseases to the General Hospital from the Lying-in-Home? A. No.

(To Court :

Q. Suppose a lady developed appendicitis? A. That would be sent.) 20

Q. You have admitted the other doctors save Dr. Attygalle are better qualified and all of them including Dr. Attygalle better qualified in gynæcology and all of them except Dr. Attygalle better experienced in obstetrics? A. Yes.

Q. You Dr. Thiagarajah have been retained to advise the other side? A. I do not know the implication of retained.

Q. You have been paid a fee? A. I have not been paid a fee but I will be probably.

Q. You have been retained to instruct them on the medico-legal aspect? A. I have not stipulated a fee. I expect a fee for the services I render.

Q. Mrs. Alles has already given evidence? A. As a matter of fact I got a letter from the lawyers. I said let the question of fee be deferred till after the case. I did not want it to be suggested that I came to give evidence for a fee.

Q. Dr. Thiagarajah medical witnesses who come to the witness box they are entitled to batta. A. I might waive the fee but no fee has been paid and the question of fee has not been raised.

Q. How many days have you been in Court? Throughout the whole of Dr. Wickremasooriya's evidence throughout the whole of Dr. Attygalle's 40 evidence and throughout the whole of Dr. Navaratnam's evidence? A. Yes, except a part of Dr. Navaratnam's evidence.

Q. You have been taking part in consultations? A. Yes.

Q. Have you been helping to frame the questions in cross-examining the other experts? A. Yes.

Q. Dr. Theobald's name was put on the list of witnesses—you were aware of that? A. Yes.

Q. Did you have a talk with Dr. Theobald? A. Yes.

Q. And your views? A. Yes.

Q. You put your views to him and discussed with him? A. I said this is the case and asked him what his view was and I put forward my view. Then we found ourselves in agreement.

10 Q. You accompanied Dr. Theobald here to Court? A. Yes.

Q. Did Dr. Theobald read through the evidence? A. First of all he was sent the proceedings. Then after that I went to him.

Q. You put before him your views? A. Yes.

Q. I am putting it to you Dr. Thiagarajah you have made certain researches and produced a number of passages for the cross-examination of the medical experts? A. Most of them.

Q. Mrs. Alles said you were retained and paid a fee? A. I have not been paid a fee.

Q. You were told what the point in the case was? A. Yes.

20 Q. You were told the facts as were briefed to the other side? A. Yes.

Q. You attended consultations? Did you attend any consultations before the trial began? A. Firstly to familiarise myself. Then I said find two things. First to find what Dr. Wickremasooriya says then the menstrual history of Mrs. Alles. That was after Counsel gave me the particulars of the case.

Q. Because without that menstrual history the whole case put forward by Mrs. Alles must fail? A. That is all routine. I found no particulars about menstrual history. From the evidence I found no in-
30 formation as regards Mrs. Alles' menstrual history.

Q. You said there was no information in regard to Mrs. Alles' menstrual history? A. Yes.

Q. You could not form any opinion? A. Yes.

Q. One of the factors was Mrs. Alles' menstrual history? A. Because that is the most relevant thing in the case—gynaecological aspect of the case.

Q. If that history is wrong or been wrongly given will you alter your evidence? A. I would have to some extent.

Q. Mrs. Alles' menstrual history when did you ascertain? A. I
40 made an appointment through Counsel and got particulars from Mrs. Alles at the bungalow.

Q. I would like to know the date? A. About three weeks before the commencement of the evidence of the medical witnesses.

No. 36
Plaintiff's
Further
Evidence
Dr. Thiaga-
raja
Cross-
examination
—continued.

Q. That was after the trial started? A. Yes.

Q. Prior to that you had been told what the question in dispute was? A. I had been told by Counsel.

Q. Namely that the child was born on 26th March that the only known date of coitus was 9th August? A. Yes.

Q. And that the question would arise as to whether that child could possibly have been conceived on the 9th August? A. Yes.

Q. At that date you did not know the degree of development of that child at birth? A. I did not form any opinion.

Q. You were going on the assumption most adverse assumption to Mrs. Alles' case that the child was fully developed? A. I did not come to any conclusion. I said I would want the two points what Dr. Wickremesooriya had found and the menstrual history.

Q. Did you go up to your colleague and get the information from Dr. Wickremasooriya? A. We were discussing the case and Dr. Wickremasooriya did not give me the information. I did not press him.

Q. What did Dr. Wickremasooriya tell you? A. He did not give me the facts of this case.

Q. Did you ask him what the facts were? A. I did not ask him. It is professional matter and I could not ask him.

20

(To Court :

Q. In which he dealt with Mrs. Alles? A. Yes.

Q. You were Mrs. Alles' medico legal expert? Therefore what is the objection to the medical expert telling the medico legal expert? A. I could not press him for details. I did not want to embarrass him because he was coming to give evidence in this case in Court.)

Q. He was in Mrs. Alles' list of witnesses? A. As a matter of fact he had not got summons then. I told him first he might get summons.

Q. Summoned by Mrs. Alles? A. Actually he was expecting to be summoned by you people. He was surprised to find that he got the summons from the other people. Whatever it is he got summons from the side he did not expect to summon him.

Q. Are you suggesting that Dr. Wickremasooriya suppressed anything from you and gave it to the other side? A. No.

Q. He is a completely honourable man? A. Completely honourable man. We discussed generally the medico legal aspect but not the facts. If I asked him he might have but I did not ask him. If I was in his place I would have done the same thing.

Q. Until Dr. Wickremasooriya got into the witness box you were groping in the dark in regard to the two points you did not know the facts as would be stated by Dr. Wickremasooriya and you did not know the menstrual history? Why did you not ask for the menstrual history? A. I met Mrs. Alles before Dr. Wickremasooriya gave his medical evidence.

Q. You said it was not possible for you to give any assistance to Counsel or to the lawyers without knowing two factors one was her menstrual history and the next was Dr. Wickremasooriya's evidence? When Mrs. Alles gave you her menstrual history you are still unable to form any opinion without Dr. Wickremasooriya's evidence? A. I was waiting to confirm this fact with the history she gave me and the history she gave Dr. Wickremasooriya tallied.

No. 36
Plaintiff's
Further
Evidence
Dr. Thiagarajah
Cross-examination
—continued.

Q. What was it that tallied? A. The history of the last menstrual period.

10 Q. You are taking the last menstrual period? A. Yes and the full history. He treated her for sterility; he had not got the menstrual history obviously.

Q. He told us in Court that his impression was menstruation was normal. When you heard Dr. Wickremasooriya's evidence did it confirm the evidence with the plaintiff have you—how did it confirm? A. Certain facts regarding the duration of pregnancy the size of the fundus all that fitted in with the history Mrs. Alles gave.

Q. When you heard Dr. Wickremasooriya give evidence did it tally with what Mrs. Alles told you? A. Yes.

20 (Evidence put to witness.)

Q. Dr. Thiagarajah the plaintiff has told us in the witness box that from the age of 11 her menstrual flow came out in clots. That it lasted from 9 to 10 days and that it came at periods so irregular as 21, 24, 28, 30, 40, 45. Can menstrual blood clot? A. In abnormal flows it clots.

Q. Normal menstrual blood does it clot? A. No.

Q. There was first the clotting which was abnormal? A. Yes.

Q. Lasting 9 to 10 days abnormal? A. Yes.

Q. The time in which the menstruation came on? All abnormal?
A. Yes.

30 Q. She went to Dr. Wickremasooriya for treatment for sterility. If she had given a history that had these three abnormalities they would have been matters which a doctor would have considered? A. If he had taken a history.

Q. Each of these things would have received his consideration? A. Yes.

Q. Suppose a lady came to you and said that she wanted a baby but she would not conceive and you went into the history and she told you that when she had her periods there were clots that the period lasted 9 to 10 days and that it came on in intervals of 21, 24, 28, would it strike you
40 as being abnormal—would you make a note of it? A. If I am in the habit of making notes.

Q. It would have made an impression in your mind? A. It would.

No. 36
Plaintiff's
Further
Evidence
Dr. Thiaga-
rajah
Cross-
examination
—continued.

Q. And it would create an impression in the mind of any obstetrician or gynaecologist? A. Yes.

Q. Right along from puberty to marriage? A. Yes.

Q. Now she has got two periods a month? A. Yes.

Q. Extraordinary thing? A. That is not abnormal thing.

Q. Would you agree with Dr. Attygalle that such a woman with menstruation of 21, 30, 40? A. I do not agree.

Q. Would you agree with Dr. Frank Gunasekere that it is a curiosity? A. It is not a curiosity it is abnormal. I do not agree with Dr. Attygalle. To one who is not constantly seeing or to one whose practice is not gynæcology it must appear as a curiosity.

Q. It is surprising that Dr. Attygalle had not come across such a case? A. Yes.

Signed. R. F. DIAS,
D. J.

MR. AMERASEKERE renews his application to recall Dr. Theobald.

I tell him it is no use his renewing it. I have made my order. I have nothing further to say.

Case postponed for tomorrow.

Signed. R. F. DIAS, 20
D. J.

27-1-43.

Counsel as before.

D. THIAGARAJAH affd.

Recalled. Further cross-examined.

Q. You were telling us yesterday about a woman with three abnormalities that would have been a matter that you would have considered? A. It would have created an impression on me.

Q. And on the mind of any obstetrician? A. I cannot say that. I cannot speak with regard to other obstetricians. 30

Q. In a history like that the possibility of ovarine disorders strikes one? A. Yes.

Q. It would strike you merely if those dates were given namely 14, 21, 28 and so on? A. Yes.

Q. And when to that was added the duration period of 9 to 10 days it would be a further indication of ovarine disorder? A. Yes.

Q. The facts that it came in clots would still have strengthened the suggestion of ovarine disorder? A. Yes.

Q. The lady had gone to Dr. Wickremasooriya to be treated for sterility? A. Yes. 40

Q. In the case of treatment for sterility the doctor would first have to find out whether the lady was ovulating? A. There is no method by which you can know that a person is ovulating.

Q. That would be a question that it would be necessary to be answered by the doctor because without ovulation there cannot be conception? A. Yes.

Q. So that he would necessarily bring his mind to the question as to whether she was ovulating? A. Yes he would keep that in mind before endeavouring to treat her case.

10 Q. One method of treating sterility is by finding out whether it is due to ovarine disorder? A. Yes. That is one of the causes. If there was ovarine disorder and there was no regular ovulation, ovulation would have to be induced first before any other treatment can be resorted to? A. Yes.

Q. The treatment for bringing on ovulation is injections of petuitiry substances? If there is no ovulation that would be the treatment.

Q. That is in order to bring about ovulation? A. Yes.

Q. And by bringing about that incidentally correct the menstrual disorder? A. That does not follow. Because you might be able to 20 stimulate ovulation but that would not establish the menstrual rythm.

Q. Menstruation depends on ovulation? A. No.

Q. Does it follow ovulation? A. On this question of ovulation there is no scientific evidence where observations have been made on human beings. It is mostly conjecture and in dispute, based on experiments on animals.

Q. Without ovulation there cannot be menstruation? A. Yes that is correct.

Q. Menstruation is what follows after ovulation when the ovum is not fertilized? A. Yes.

30 Q. The theory is that menstruation connotes ovulation? A. That ovulation is a phenomenon which takes place in the course of menstruation, during the menstrual cycle I mean.

Q. What happens is this the walls of the uterus, the endometrium is prepared for the reception of the ovum? A. Yes.

Q. Then the ovum comes down? A. About the 14th or 15th day it is liberated and then it gets into the fellopian tubes.

Q. And then it comes to the uterus? A. Yes ultimately.

Q. If it is not fertilized after a period of time the endometrium which has been prepared begins to drop down? A. Yes.

40 Q. And goes away with the menstrual flow? A. Yes.

Q. So that menstruation is really the going away of the endometrium that has broken down because it was not fertilized? A. Yes,

No. 36
Plaintiff's
Further
Evidence
Dr. Thiaga-
rajah
Cross-
examination
—continued.

Q. On the basis of which the principle will follow that there is the possibility of ovarine disease and what is prescribed is hormone injections?

A. Yes.

Q. When ovulation begins to take place thereafter one would expect menstruation to occur? **A.** Yes. But there is no time limit within which the menstrual cycle will occur, it may be correct or not.

Q. But if he succeeds in bringing about ovulation in regular cycles then it would be correct because menstruation also comes round? **A.** Yes.

Q. So that with a history like that you told us the ovarine disorder would strike one and there would be the normal treatment for ovarine disorder? **A.** Yes.

Q. Another known treatment for sterility is the insaflation of the tubes, that is against the tubal block? **A.** Yes.

Q. That is to say if the doctor suspects that the fellopian tubes are obstructed then he resorts to insaflation? **A.** Yes.

Q. So that you as a doctor with your experience given this history you would have realised the possibility of ovarine disorder? **A.** Yes.

Q. So that having heard the evidence of Dr. Wickremasooriya at the time he was treating Mrs. Alles—1936, 1937.....? **A.** There was no perantic or medical measure available for stimulating the ovarine functions.

Q. You heard his evidence what was the result he was trying to get? **A.** To find out whether the tubes were blocked. I think he also said incidentally for irregular menstruation.

Q. Dr. Wickremasooriya thereafter insoflated the tubes on two occasions and thereafter ultimately the lady did conceive? **A.** May be.

Q. Dr. Wickremasooriya attended on her throughout the whole of her first pregnancy. This disorder that the lady spoke about you admitted was abnormal? **A.** Yes.

30

Q. Strikingly? **A.** Yes.

Q. It had been treated with success by Dr. Wickremasooriya and she conceived? **A.** The only inference I can draw is that she began menstruating irregularly and she was ovulating because he removed the plug.

Q. Being the doctor who was in attendance on her would he not be interested in the development of the case? **A.** How can I answer that.

Q. Being a scientific man when you are given an extraordinary case like that and you treated and found the treatment was successful you would be following history? **A.** I would be interested in the case.

40

(To Court :

Q. And that would depend on whether the lady came back? **A.** Yes.)

Q. The lady went to the doctor during the whole of her first pregnancy? ~~A. Yes.~~

(To Court :

Q. Are you sufficiently interested in these abnormal cases as to keep an eye on them? A. I am particularly interested in the subject of irregular menstruation and a case like this I would note down.)

I do not think Dr. Wickremasooriya was interested in this aspect of gynæcology.

Q. You say that for yourself you would have been interested? A. 10 Yes.

Q. As a doctor? A. Yes interested in the subject.

Q. Were you aware of this particular menstrual history before Dr. Wickremasooriya gave evidence—the 9 to 10 days' duration? A. Yes.

Q. That is what the lady told you? A. When Counsel asked me to instruct him I realised I must find out one or two things and I got the menstrual history.

Q. So that when Dr. Wickremasooriya got into the box you knew the menstrual history? A. Yes.

Q. And you knew it was strikingly abnormal? A. Yes.

Q. Can you give the date when you were given the menstrual history? 20 A. Yes if I am given the date when Dr. Wickremasooriya gave evidence.

Q. 21st December? A. Two or three days before that.

Q. How did you get it? A. I made an appointment through the proctors of Mrs. Alles and she came to my consulting room and this history was obtained. Until then I did not know her menstrual history.

Q. This period of 9 to 10 days' duration was not put to any of the medical experts in the box? A. (This is comment).

Q. Dr. Wickremasooriya was the first medical witness? A. Yes.

Q. And you were here in Court assisting the plaintiff? A. I 30 happened to discuss with Dr. Wickremasooriya this aspect of pregnancy in irregularly menstruating women, two or three days before he was called.

Q. Having discussed it with him also did you suggest to your lawyers, look here this is a striking thing Dr. Wickremasooriya should remember this? A. No.

Q. You heard him say that the lady's menstrual history made no impression on his mind? A. Yes.

Q. You were in Court when Dr. Wickremasooriya gave evidence? A. Yes.

Q. Was it suggested through you to Counsel that this lady was a 40 person who menstruated irregularly in the sense you are now speaking?

A. I do not think so far as I can take my mind back that Counsel put that question whether Mrs. Alles had an irregularly menstruating period but I believe he put it in this way, if a woman was menstruating and so on.

No. 36
Plaintiff's
Further
Evidence
Dr. Thiaga-
rajah
Cross-
examination
—continued.

Q. It was not put to Dr. Wickremasooriya that the lady had a cycle of 14, 21, 28 days and so on? A. I do not think so. Because I think Dr. Wickremasooriya agreed with Counsel.

Q. It was not put to him? A. No it was not.

Q. Nor was it put to him that the lady had a period of 9 to 10 days' duration? A. I do not think so.

Q. Nor was it put to him that the lady had clots when she was coming to see him? A. I cannot remember that.

Q. If a lady came to you for treatment for sterility the first question you would ask would be her menstrual history? A. Yes. 10

Q. Would you not expect any doctor to ask a lady who came for treatment for sterility to ask her first what her menstrual history was? A. Yes I would.

Q. If she had given these abnormalities they would have been matters that the doctor would have considered? A. If he had her history.

Q. Do you suggest that it is possible that if a lady went to Dr. Wickremasooriya he would not have asked her her menstrual history? A. Speaking for myself and other gynæcologists the essential thing is to get that information.

(To Court :

20

Q. Is it correct to say that all medical men would proceed along to a certain order and routine? A. Yes.

Q. And in all diseases there is a certain routine to be followed? A. Yes.)

Q. You also told us yesterday that " he treated her for sterility and that he had not got her menstrual history obviously " ? A. Because he said he had not got it.

Q. So that it made no impression on his mind? A. He said he had not got it and it made no impression on his mind.

Q. When you asked him whether he got her menstrual history he 30 said that he had not? A. Yes.

Q. You were asked certain things yesterday about the premature rupture of the membrane? A. Yes.

Q. You used the word premature in relation to the stage of the labour? A. Premature in relation to the duration of the pregnancy. Expected date of labour.

Q. The normal beginning of labour is the dilation of the os? A. Yes in the case of normal labour.

Q. Now the os which means the mouth of the womb the cervix begins to open after a little discharge? A. Yes. 40

Q. When the cervix is fully dilated then in the normal case these membranes rupture? A. Not in every case but in normal cases the cervix would not dilate to the fullest extent the membrane can rupture before that.

Q. But the stage at which normally the membranes are expected to rupture would be the stage at which the os is fully dilated? A. No.

(To Court :

Q. No general rule could be laid down on that point? A. No.)

Q. Is it not correct to say that when you talk of premature rupture what is in your mind is that the membranes were ruptured before the os is fully dilated? A. That is not the conception I have.

Q. Take the case of a non-post-mature delivery? A. You are taking the abnormal cases.

10 Q. In the case of a non-post-mature child the gestation had exceeded the period of 280 days? A. That would I say refer to abnormal cases.

Q. I told you I was dealing with normal cases. Now we will come back. In normal cases the first stage of labour is the dilation of the cervix? A. Yes.

Q. And when the os has been fully dilated the membrane ruptures in normal cases? A. Yes.

Q. Any rupture of the membrane prior to the dilation of the os would be a premature rupture of the membrane? A. That is not my conception.

20 Q. Now take the case of a non-post-mature child? A. Yes, post-mature from what date?

Q. From the first date of the last menstrual period. For the purpose of my illustration I will make a post-mature period of 310 days after gestation calculated from the first day of last menstrual period? A. Yes.

Q. Before the os is dilated the membrane ruptures would that not be a premature rupture of the membrane? A. That is a thing that very seldom happens. I would say it is an early rupture in relation to the labour.

30 Q. That is to say it has come before it should come? A. The labour pains had set in but the membranes had ruptured earlier. That is assuming that labour has already set in. The labour has started the os is not dilated yet, but the membrane has ruptured, that is an early rupture.

Q. Is that not premature rupture? A. My idea of premature rupture is if a certain pregnancy calculated from the last menstrual period is expected on a particular day and before the on set of labour if the membrane ruptures I would call that a premature rupture of the membrane.

40 Q. Would it be incorrect to call it a premature in the case I gave you? A. Yes for two reasons, first of all you are taking an abnormal case. Secondly the membrane ruptures after the on set of labour.

Q. You have already said that the membrane ruptures normally when the os is fully dilated? A. That is after the labour pains have started.

No. 36
Plaintiff's
Further
Evidence
Dr. Thiaga-
raja
Cross-
examination
—continued.

Q. Would you admit that when the rupture takes place there can be a leakage of amniotic fluid and the child goes on for the full period the child would be a full-term child? A. That is possible. We call that dribbling.

Q. Would that be a premature rupture? A. When there is dribbling in small quantities we presume it a rupture.

Q. When the amniotic fluid comes out there is a leak would that be a premature rupture? A. When you say premature rupture it means something different.

Q. Would that rupture be a premature rupture? A. No but in a broad sense it can be used.

Q. In a broad sense can you say premature rupture in the instance I gave you of the 310 days' gestation, pains come on os not dilated? A. Yes. You can call it premature rupture.

(Evidence put to witness) "I had made an examination and found that the labour had advanced, os was half dilated and I found the membrane ruptured" was that premature rupture or not? A. I say it need not necessarily be a premature rupture.

Q. In a broad sense would you call it premature rupture when the membrane ruptures before the os is fully dilated? A. If the os is dilated and membrane is ruptured I would not say it is a premature rupture.

(To Court :

Q. Was the plaintiff asked when her membrane ruptured by anyone? A. No I did not.

Q. Did you suggest such a question to be put to clear the doubt when the plaintiff was in the box? A. I was not working this case out.

Q. Did you suggest that as one of the questions to be put to try to fix the time when the membrane ruptured? A. No.)

Q. You heard Dr. Wickremasooriya say that he was informed by Dr. Fernando that the membrane had ruptured? A. I do not know that his evidence is that there was a premature rupture of the membrane.

Q. He said that he was 'phoned up by Dr. Fernando when the membrane had ruptured?

(To Court :

Q. The only person who can say when the membrane ruptured is the plaintiff? A. Yes.

I do not know whether she has been asked that question.)

Q. You realise it was a question of importance the time when this membrane ruptured? A. I wanted to know whether it was a full-term child.

Q. To find that out it was important to find out when the membrane ruptured? A. I was not trying to make up evidence I was reading the evidence given by Dr. Wickremasooriya.

Q. Did you tell him that for the point of view you had in mind it was necessary to find out whether the membrane had ruptured? Yes. *A.* Yes.

Q. You did tell him for the point of view you had in mind it was necessary to find out when the membrane ruptured? *A.* No. I wanted to know when labour supervened, I expected the date of delivery. And for that purpose it was necessary to know when she delivered and not when the membrane ruptured.

Q. You had a point of view in mind for the advancing of that point of view you realised that it was of importance that it should be ascertained whether the rupture was premature or not? *A.* If there was no premature rupture then I would have said "this" child which was born could not have been conceived on 9-8.

Q. He could not then have formed any opinion to say at what stage the membrane had ruptured? *A.* He may have asked the patient.

Q. So the patient was the only person who could have provided this information? *A.* Yes and you could check it up on what you find afterwards.

Q. My question to you is this, you had a certain point of view in mind that was a theoretical point of view that was going to be advanced? *A.* I do not know that.

Q. Did you not know what plaintiff's case was and what she was trying to establish? *A.* No I did not know.

Q. Did you not know the case the plaintiff was seeking to establish? *A.* No.

Q. Then you are purely an impartial expert witness? *A.* Yes.

(To Court :

Q. You deny that you have been twisting medical opinion to set up a theory? *A.* Yes. I must emphatically protest if any such suggestion is made.)

(I inform the doctor that no such suggestion has yet been made.)

Q. Dr. Thiagarajah there was a particular point of view in your mind that is to say a view which might possibly reconcile the birth of this child on the 26th of March with its conception on the 9th of August? *A.* Yes.

Q. Normally conception on the 9th August and birth of a full-term child on 26-3 would be? *A.* Would be 280 days after the last menstrual period plus or minus 14 days.

Q. You say that the birth of a full-term child would take place normally 280 days after the first day of the last menstrual period plus or minus 14 days? *A.* Yes.

Q. The date of conception of that full-term child would be 14 days less or 14 days more? *A.* I do not agree there, if a woman's first menstrual period was on the 5th of June and if she conceived three days after that the anticipated date of delivery would be 280 days from the last

No. 36
Plaintiff's
Further
Evidence
Dr. Thiaga-
rajah
Cross-
examination
—continued.

period, that is a child presenting the characteristics of a full-term child if the same woman in that cycle instead of conceiving three days after conceived three days before the expected date of the next period that woman at the end of 280 days calculated from the last menstrual period will produce a child which will have the characteristics of a full-term child.

Q. That is if that lady having conceived towards the end of the menstrual period delivers a child 280 days after the first date of the last menstrual period.....? *A.* She will still produce a child which will have the characteristics of a full-term child although there are 28 days less than the child conceived in the first instance. 10

(To Court :

Q. In order to decide all this you must know the first date of the last menstrual period? *A.* Yes that is one thing.) Otherwise everything is in the air. If I swear and say such a thing is impossible and bastardise a child I should base my opinion on data which is not scientifically in dispute. Ovulation and menstrual supply and maturity all these are most uncertain.

(To Court :

Q. The onus as you know in law is very heavy on the question of legitimacy? *A.* Yes that is how it strikes me.) 20

Q. You said the period of gestation is a doubt? *A.* No, the period between which you can get a normal child is a matter of doubt.

Q. You heard the evidence of Dr. Wickremasooriya on that point? *A.* What did he say. That this child would have had a degree of prematurity which he did not find if it was conceived on 9-8?

(To Court :

He says that at the time of delivery he knew there was some trouble and that this case was coming to Court and therefore he looked at this child with more care than he ordinarily would have done and he was then asked whether if the child was conceived on a certain date there would be that degree of maturity present and he gave certain answers do you agree with that evidence? *A.* Yes. 30

Calculated from the last menstrual period it would be 258 days and there is nothing to show that such a child would not have all the characteristics of a fully developed child and that again depends on the accuracy of the date 12-7.)

Q. Supposing it is assumed that the husband had no access to his wife till 9-8 assume that the patient is unable to give the menstrual date 12-7 and apparently a full-term child was produced on 26-3 can you say that the coitus had on 9-8 could have produced this child? *A.* Yes. 40
Because when Dr. Wickremasooriya examined the patient on 23-x in his own evidence he said that the duration of pregnancy was 15 weeks and if you calculated if from July then the duration of pregnancy will be about 15 weeks. If on the other hand the last period was in June that would have been four weeks added to it and the fundus would have been higher.

Q. If it is held that 12-7 was the date you still say that that coitus on the 9th August could have produced this child? A. I would not say so, but it is not impossible.

Q. Even if her last menstrual period had not come on on 11-7 you would still say it is not impossible? A. Yes.

(To Court :

Q. Supposing that 12-7 cannot be accepted and all the details you have got are coitus 9-8 can it produce that child delivered by Dr. Wickre-masooriya on 26-3? A. Very unlikely

10 Q. One thing that makes you to say that it is not impossible is the fact that you are adding 20 odd days by taking the last menses to 12-7? A. She had intercourse on the 9th and she got pregnant.

Q. The question is whether that child is the result of the coitus of the 9th August or some previous one? A. I am prepared to go so far in expressing an opinion that this coitus on the 9th August could have impregnated any ovum that was liberated in that menstrual cycle.

Q. It is the date 12-7 that is causing all the disagreement? A. Yes. Yesterday I said that the limits of this conception was between the 20-6 and 12-8 because if she conceived on 20-6 her last menstrual 20 period would have been 10-6.

Q. Why? A. August did not show her last period.

Q. Why 10th June? A., I presumed she had no period in July.

Q. You said if she had conceived on 20-6 her last period was 10-6. Assume that conception took place on 20-6 then on that presumption you fix the date of the last menstrual period as 10-6? A. It is usually 15 days.

Q. So that without knowing the date of the menstrual period assum- ing a particular date of conception you normally put it back to 10 or 15 days to find the date of the last menstrual period? A. We have got 30 the menstrual history.

Q. If there is no menstrual history? A. Then we are sunk and we have to get the height of the fundus and other signs and check it.

Q. In this illustration you gave you take 11-7 and then you said her period would have been on 10-6. That is to say 11-7 if she missed the last period would have been 10-6? A. Yes.

Q. In all these calculations you are going on the basis of a regular menstrual cycle? A. Yes.

Q. As a matter of fact this is on the basis of a regular menstrual supply? A. It only applies to women with a regular menstrual cycle.

40 Q. They have no application to a woman who has an irregular menstrual supply? A. Yes.

Q. You told us yesterday that the only recognised method of ascer- taining the dates is on the first date of the last menstrual period? A. Yes.

No. 36
Plaintiff's
Further
Evidence
Dr. Thiaga-
rajah
Cross-
examination
—continued.

Q. Now am I correct in saying that your position today is that these tables and statistics are applicable to regular menstrual supplies only?

A. Yes.

Q. And it is not possible to apply when you do not know whether the supply is regular? A. We can apply but we have to check it up because an irregularly menstruating woman can have a full term child at the end of 280 days. A colleague of mine in the.....

Q. Are you speaking of your personal knowledge or what a colleague has spoken to you about? A. From personal knowledge. From my personal knowledge I could testify it because an irregularly menstruating woman did deliver a child of full term within the period that I have mentioned.

Q. My question is this a woman with irregular menstruation might have a cycle once in 28 days occasionally? A. Yes.

Q. That is to say she had one menstruation one month then in 28 days the next one comes and so on? A. Yes.

Q. Well taking that particular cycle after the first menstruation she conceives nobody can say whether the next possible one would be at the end of 28 days? A. No.

Q. If it was going to be at the end of 28 days then the child would come in 280 days? A. Yes.

Q. So that there are cases where it is possible for a irregularly menstruating woman to have a child in 280 days? A. Yes. Because what happens after conception nobody knows. The foetus is there and it is developing.

Q. There is that possibility then in an irregularly menstruating woman? A. Yes.

Q. But in the case of irregularly menstruating women these tables are there for general guidance in the case of normally menstruating women? A. Yes.

30

Q. So much so that we know that there is such a thing as Amenorrhoea and lactation suppression of the menstrual flow while the mother is suckling the child? A. Yes.

Q. Now does it happen that a lactating mother may have a period or two and then have the a period of amenorrhoea? A. Yes.

Q. In the course of that she may ovulate and during the period when she is in menses the pituitary gland now assumes a new role and the ovulation stops? A. In fact we do not know whether it stops completely today it is a matter of dispute.

Q. If a lady gives birth to a child and while nursing the child has one or two periods? A. That need not be necessarily menstruation.

Q. If there is a long period of three or four months without any other bleeding before the next menstruation comes on ovulation will take place?

A. Not necessarily because menstruation and ovulation are not at all dependent. You can get menstruation without ovulation and ovulation without menstruation.

Q. For menstruation to take place ovulation must precede? A. Yes. For a proper menstruation.

Q. Now take this lady again who is lactating she has one or two discharges which she considers menstruation? A. Yes.

10 Q. Then she has a long period of amenorrhœa? A. Yes.

Q. Now the question is before menstruation proper comes on there must be necessarily ovulation? A. No, because there are a lot of people who conceive before that.

Q. Proper menstruation must always be preceded by ovulation did you not say that just now? A. Yes.

Q. There is lactation and while that is going on there are one or two blood passages which the lady considers menstruation then there is a period of amenorrhœa and then before the proper menstruation comes on there is ovulation? A. Yes.

20 Q. That ovum we will assume gets fertilized before the date that the menstruation could come on? A. Yes.

Q. Once that is fertilized that menstruation that would come on is inhibited? A. It was inhibitory for four months before.

Q. If ovulation takes place for a number of days there would be a flow which would be menstruation? A. Not necessarily.

Q. When there is ovulation and when the endometrium breaks down after ovulation and there is a flow with the discharge of the ovum that would be menstruation? A. But the converse is not true.

30 Q. My point is that she can conceive because at a certain stage the endometrium has.....? A. We do not know what is happening. These are the dark spots.

Q. She has a long period of amenorrhœa and then she conceives? A. Yes.

Q. Three or four months later she comes to you and gives you the last date of her menses as the date of that bleeding discharge four or five months ago? A. Yes.

Q. If then the only recognised method of ascertaining this is the tables used to apply both in regular and irregular menses and you apply the tables you will be five months out? A. Yes.

40 Q. So that in the case of irregularly menstruating ladies really you apply other tests to find out how advanced the pregnancy is? A. You take the last period and calculate the pregnancy and then you check up with the other information.

No. 36
Plaintiff's
Further
Evidence
Dr. Thiaga-
rajah
Cross-
examination
—continued.

Q. Supposing the lady came to see you in October and then she said she could not remember the last date of her menstruation and she again sees you in November and said nothing and she saw you again in December what is the medical practice in a case like that will you accept the date given? A. I will do an independent examination.

Q. Dr. Wickremasooriya's evidence is that in October she could not remember? A. Yes.

Q. Then in October he diagnosed in the 5th month and then in December she came out with this date for the first time now what is the medical practice in a case like that where the patient is uncertain? A. 10 I would have made a note L.M.P. query.

Q. Supposing after that the lady is delivered by you of a child on 26-3 with all the characteristics which Dr. Wickremasooriya says then you have some further data is it then possible for a man like Dr. Wickremasooriya to calculate the possible date of conception? A. To base your opinion upon the gestation interval is not sound. That point was brought out in the case of Clarke vs. Clarke.

Q. Now you told me that in that case in which case I gave you the lactation and so on, you would be completely out of five months would you apply the other test the height of the fundus, etc.? A. Yes. 20

(To Court :

Q. Then these tests are not infallible? A. Yes. Because if the bladder is full you could push up the fundus and so on.)

Q. And when the child is born you could make up the deficiencies and form an actual opinion? A. I would be very careful about that. In a Court of law I would not say that this child could not have been born or that it was not possible to have been born on such a date. I may have a hunch but I would not say so on oath.

Q. Quite apart from lactation other things bring about amenorrhoea? A. Yes any external stimuli, etc. 30

Q. In all such cases you cannot reckon from the first date of the last menstrual period and any such reckoning is liable to go wrong? A. Not in all but in most.

Q. In a large number of cases? A. Yes.

Q. In cases where you find amenorrhoea? A. I would not rely on it solely.

Q. Then the first date of the menstrual period is a guide you would rely on solely only in the case of regularly menstruating women? A. Yes.

Q. Now here it is in evidence in this case from the lady herself that 40 her menstrual history was not merely irregular but strikingly abnormal? A. Yes.

Q. And her evidence is that as a fact from the date of puberty up to date and sometimes she says she menstruated twice a month. After preg-

nancy and after lactation does a woman have discharges twice a month and would you call them menses? *A.* No, but she might mistake it for that.

Q. And she might mislead a medical expert also? *A.* I would ask her for how many days she had it and generally how long she had it and if she says it was only for a day or two and not so profuse then I would presume it is not a real menstruation.

Q. Then a medical expert will always weigh the evidence before accepting it? *A.* Yes.

10 *Q.* Now to come to this menstruation twice a month. You told me it is not uncommon to have a discharge twice a month after pregnancy? *A.* Yes.

Q. That is not menstruation although it lasts the same number of days as real periods? *A.* Yes.

Q. So that if she tells you she had menstruated and she tells you the number of days and so on still you say that would not be menstruation? *A.* Yes.

Q. So that merely by the number of days of the flow you cannot say? *A.* You can form a rough idea.

20 *Q.* Twice in November and twice in December? *A.* There again a normal woman ovulates once a month and when she menstruates twice a month there is considerable authority which says that she can ovulate twice a month and that would also be followed by a discharge and she would have two menstrual flows and ovulate once.

Q. You say then if she had it twice a month after child birth that would not be menstruation? *A.* Not two full blown menstrual flows.

Q. In all these matters you have to go on what the patient tells you? *A.* Yes.

30 *Q.* With regard to menstruation the patient is the only one who can say and a doctor must go on that data? *A.* Yes.

Q. If she says she had a flow for a number of days and that corresponds with the normal flow you would take that as menstruation? *A.* Yes.

(To Court :

Q. Supposing a doctor was examining a patient for appendicitis and that woman was menstruating and wearing a girdle and napkin would that be visible? *A.* Sometimes the doctor would expose the whole abdomen and others push the garment down sufficiently. If a patient says she is menstruating we usually don't.

40 *Q.* If the patient does not say it? *A.* The doctor would not see it necessarily.

Q. In examining for renal colic she would be turned round in such a case? *A.* It would be apparent I think.

No. 36
Plaintiff's
Further
Evidence
Dr. Thiaga-
rajah
Cross-
examination
—continued.

Q. You have made abdominal examinations of married women what is the practice do you allow the husband to be present? **A.** It is usually left to the husband to leave the room but if by some indication he suggests he likes to be there we do not ask him to go out. We leave it to his good sense.

Q. If there are two mutts and you have to examine the wife and the husband has walked in? **A.** All the more reason why I would ask him to stay because he would not know the ethics of examining and so on.) We deal with it tactfully.

Q. They generally leave the room? **A.** Yes. I mean laymen. 10

Q. We were talking of abdominal examination for appendicitis in a case of a renal colic? **A.** The pain is in the front or behind.

(To Court :

Q. Would not a doctor turn the patient and tap him on the back and so on? **A.** Yes. But sometimes in renal colic the symptoms are so obvious that we say it straight away.

Q. A renal colic may have referred pains sometimes? **A.** Yes.)

If the person who was in the room was not the husband if he is a doctor we invite him to stay. That is the doctor in attendance.

Q. If it was a man friend? **A.** The same applies. 20

Q. Supposing you went in and had to perform an examination and you found a friend of his a relative? **A.** I would not ask him to go out I would proceed to indicate that I was going to examine the patient.

(To Court :

Q. It is for the lady to decide? **A.** It is not so much for the lady to decide it, it is for the person who is in the room. He should decide whether he should stay or not.

Q. A fortiori if that man happens to be a doctor? **A.** I would still leave it to him.)

Q. The period of gestation is calculated as 280 days from the date of 30 the first date of the last menstrual period up to the date of delivery, that is in the case of a normally menstruating women? **A.** Yes, 280 days plus or minus the 14.

Q. The plus or minus 14 being allowed for the period that lapses between the onset of the menstrual flow and the date of ovulation? **A.** Yes.

Q. You allow that because? **A.** The normal period of ovulation takes place between the 12th to the 15th day.

Q. In the 12th to 15th day is the date the conception takes place that is why you say plus or minus 14 days? **A.** Yes. 40

Q. The uterine life—intra uterine life of a child is from the date of conception to the date of delivery? **A.** Yes.

Q. Take this case, the case of a lady who had amenorrhoea a long period and has conceived you cannot know when her last menstrual date was? A. No.

Q. Then she is able to give the doctor this data that there was only one single coitus during a period of 10 months, how many days from the date of that coitus would you fix the date of expected delivery? A. A doctor cannot give you that answer because we do not know the last menstrual period and she has had amenorrhoea.

Q. You know the date of coitus, that is the only date the insemination takes place after that date? A. By insemination you mean the date of intercourse.

You inseminate when you introduce the semen. Conception is fertilisation. There again some people might say it is fertilisation and others may say embedding.

Q. Take that you are the doctor in attendance and she wants to get ready for her confinement and she says she wants to know the date and even if she gives all the details and the full menstrual history he cannot give the exact date? A. Yes.

Q. If you are told I have had intercourse on one occasion when will my baby come? A. About 250 days.

Q. From when? A. From that date of intercourse.

Q. This lady cannot give you the menstrual cycle at all would you agree that the insemination delivery period is 265 to 270 days? A. On the presumption that ovulation takes place about the 15th day or the 14th to 15th day. In terms of gestation delivery the interval would be 265 days on the presumption that ovulation takes place on the 14th to the 15th day.

Q. That 265 days is from the date of insemination? A. Yes. That is on the presumption that ovulation takes place on the 16th day, insemination takes place on the 15th to 17th days and intercourse takes place 24 or 48 hours after that, therefore conception has taken place 17 days after the menstrual period.

Q. And you calculate the expected date to be 280 minus 15 days? A. Yes. That is on the basis that that particular lady has ovulated 14 days after the last menstrual period. That applies to women who can ovulate about the 14th and 15th day.

Q. Fertilization takes place very soon after insemination? A. Yes, within 48 hours.

Q. So that when you give the insemination labour period as 265 days what you mean is that the child lives in the womb from the date of fertilization to the date of delivery the normal gestation being 265 to 270 days? A. There are about 8 days spent in the passage from the fallopian tubes. That takes about 8 days. Even there it is all a matter of conjecture.

Q. My question is this has any recognised writer on this subject set out the insemination delivery period as 265 to 270 days? A. No

No. 36
Plaintiff's
Further
Evidence
Dr. Thiaga-
rajah
Cross-
examination
—continued.

Q. Will you show me any medical text book which gives "the delivery period as the insemination delivery period? A. I think the onus of proving that is on you.

Text books on midwifery when dealing with the subject of pregnancy ask us to calculate the duration of pregnancy from the date of the last menstrual period.

Q. That was not my question is it not correct that every medical text book written by any recognised writer mentions the insemination delivery period as 265 to 270 days? A. I have not gone through every text book but a few text books and I know they have mentioned that. 10

Q. Can you mention a text book which supports what you say? A. The text books do not mention it but you are right.

Q. No text books give any other period than that? A. They give 273 days from the last menstrual period.

Q. I am asking about the insemination delivery period? A. There are so many text books and it will take a long time to find it and I do not think I will be able to find it.

Q. You told me that if I say the insemination delivery period was 265 to 270 days it is right? A. Yes, in the normal case.

Q. Insemination delivery period means the period that lapses between the introduction of the semen and the delivery of the child? A. Yes. 20

(To Court :

Q. Is that not a practical problem in cases where some of the data are missing? A. Yes.)

Q. Why did you tell me that a woman who came to you and told you that she had intercourse on 1-1 and knew nothing else except she had intercourse that day why did you give 250 days and not 265 to 275 days? A. Because in the first instance you were taking abnormal cases of amenorrhoea and now you are taking normal cases and applying like and 30 unlike. This reckoning is adopted only in the case of regularly menstruating women who ovulate once in 15 days.

Q. You now object to my giving you like and unlike you were here when Dr. Attygalle was cross-examined? A. Yes.

Q. And he said he could not compare like and unlike.....? A. But that was not on this subject in regard to the duration of the pregnancy.

(To Court :

Q. Supposing the lady came and said she had not been menstruating and she could not give any further details except one coitus and you diagnosed pregnancy and she asked you when she would be delivered of 40 the child would you ask her whether her periods were normal? A. Yes

Q. If she said irregular? A. I would go into the history and find out the cycle.

Q. If there was a cycle like what the plaintiff has told us? A. I will then find out when her last period was.

(Question repeated). At any time you can expect the baby between 250 and 265 days from the date of intercourse.)

Q. 250 to 265 days because you give an allowance always? A. Yes. Two days before expecting the period or two days after the expected period.

Q. You make an allowance for the fact that conception might have taken place quite close to the period or to the onset of the next period?
10 A. Yes.

Q. You were allowing that for all possible variations? A. I would tell her if she gets the baby a week or two later do not blame me.

Q. We will disregard the date 12-7. 9-8 is given as the only date of coitus will you add to that 250 days and tell me. That would take you to the 15th April? A. May be.

Q. 265 would take you to the 30th April? A. Yes.

Q. The insemination labour period is 265 to 270 days why do you say 250? A. For the simple reason that when you say 265 days you
20 presume that ovulation could take place on the 15th day and I say it can take place on any day of the cycle. When doctors talk of the insemination delivery period they are talking of the period that lapses between the insemination and the delivery and has no relation to the last menstrual cycle.

Q. Even if the woman ovulates two days before the insemination delivery period there will still be a period between insemination and the delivery? A. Yes. If it is two days before the expected date of the menstrual period it will be 28 days on the last period. I say the insemination delivery period can be between 278 and 252 days. I can quote
30 authority for that.

Q. Did you say a little while ago that all recognised text books say it is 265 to 270 days? A. You said I do not admit it is in text books. That 265 to 270 days was correct you said and I said it is correct.

Q. That is to say you agree with that statement? A. Yes, that is as to the correctness of what you said.

Q. Do you agree with that that that is the correct period? A. There is not authoritative statement on the subject. You are right in saying that.

Q. What I mean is this you said in normal cases ovulation takes
40 place on the 15th day and am I right in saying that the insemination delivery period is 265 to 270 days? A. I said you are perfectly right.

Q. Is it correct that it is generally accepted that the insemination delivery period is 265 to 275 days? A. No, it is not generally accepted.

No. 36
Plaintiff's
Further
Evidence
Dr. Thiaga-
raja
Cross-
examination
—continued.

Q. Can you show any text book in which the insemination delivery period is set out as anything different from that? **A.** I would refer you to this book Tweedy page 33. Here is a paragraph on this very same subject on which quite a number of authorities have recorded their observations and shows the possible dates in the cycle that conception can take place. This shows the dates on which conception can possibly take place. That is if you accept Tweedy and Theobald who is an authority. The authority I am quoting is Theobald the *ex*-President of the Cambridge Union and.....

Q. How long have you known Dr. Theobald? **A.** For the last 10 2½ years I have quoted him in some of my articles. I know he was in Ceylon when I was called as an expert.

(To Court :

Q. You rely on the opinion of Theobald why did you not inform the plaintiff that there was this expert available who should have been summoned? **A.** In the first instance I did not expect these people to object to that article which was produced and I did not know that legally there was any technical objection going to be raised and I did not want to bring him down from Hatton to give evidence on a matter on which he has put down his view. 20

Q. When you were first engaged in this case was it also to give evidence? **A.** Not to give evidence.

(To Court :

Q. Who then was to be your medical expert? **A.** Various articles and authorities I came across.

Q. You did not state then there should be another medical expert?
A. No.

Q. Although you knew Dr. Theobald was in Ceylon? **A.** Yes because I had his article and I quoted it.)

Q. When you were first spoken to you were not to give evidence?
A. Yes, because I did not want to figure in the Courts. I did not want to come into conflict with my colleagues. But if there is any scientific fact which was in dispute I was prepared to come because I was so much interested in the subject. If there are facts which are in conflict with my view I was prepared to express my opinion.

Q. So then when you were first retained in this case you definitely said you did not want to give evidence? **A.** Yes.

Q. You said when you were first spoken to you were agreeable to advise and not to give evidence? **A.** Yes.

Q. Your advice was to be given properly to lay stress on particular 40 aspects that would be favourable to the position taken up by that side?
A. That is not my conception of advice.

Q. I am putting it to you that you were there to advise on what flaws can be found in the medical evidence that would be given how these can be supported by authority that you might be able to pick up? **A.** You are completely wrong there.

No. 86
Plaintiff's
Further
Evidence
Dr. Thiaga-
rajah
Cross-
examination
—continued.

Q. I put it to you that you stipulated you were not willing to give evidence and only advise because advice would be one-sided stretching one aspect of one's theory? **A.** One did not know what trend the evidence would take later and how can I say it was going to be favourable to anyone.

10 **Q.** You came knowing what evidence Dr. Wickremasooriya was going to give? **A.** No.

Q. And you came here to advise them how best to conduct the examination and what particular questions to put? **A.** To suggest the avenues along which this examination should be conducted.

(To Court :

Q. What lines? **A.** The entire medical evidence.

Q. Without any bias on either side? **A.** Yes.)

Q. To show how a statement by Dr. Wickremasooriya for instance when he thought certain things were impossible could be attacked? Is that it? **A.** In fact I told counsel I would not like to come into conflict with Dr. Wickremasooriya, so I will be the last person to have agreed to come to give evidence which would be in conflict with him.

Q. You wanted to show how possibilities can be suggested which might break through the statements of Dr. Wickremasooriya? **A.** No.

(Mr. Amerasekera says that he never wanted to break through Dr. Wickremasooriya's evidence. He says he accepts Dr. Wickremasooriya's evidence in certain parts.)

Q. The other parts that were not accepted you were there to advise how according to you incorrectnesses which existed in his evidence could be shown? **A.** No, as a matter of fact the questions that counsel put were not all at my suggestion. He did about 75 per cent. of the questioning on his own.

Q. Where did he acquire the medical knowledge to put those questions? **A.** He must have read them. I gave him books.

Q. You pointed out passages? **A.** Yes. I was telling him what he was talking about.

(Mr. Amerasekera states his source of medical knowledge is not derived only from this witness.)

As a matter of fact Clark *vs.* Clark was brought out by Mr. Amerasekera.

(To Court :

Q. Do you know what you were retained for? **A.** To assist counsel in what manner he could conduct this examination of medical witnesses,

No. 36
Plaintiff's
Further
Evidence
Dr. Thiaga-
rajah
Cross-
examination
—continued.

Q. For his case? A. In this case and not for his case.

Q. You know he is advocating one cause? A. I told Mr. Amerasekera I am not going to say this is possible or that is possible. I am getting facts from you and I will give you my opinion and I found I am in complete agreement with Dr. Wickremasooriya and then I said I am prepared to come into the box now.)

Q. Dr. Wickremasooriya gave his evidence on the first day and I am going to show you the conflict between your testimony and Dr. Wickremasooriya's evidence? A. Anybody is entitled to his opinion. That is not a crime. 10

Q. So far as Dr. Wickremasooriya is concerned he delivered that child? A. Yes.

Q. And he alone of all the doctors who gave evidence could speak to the features of that child at the time of delivery? A. Yes.

Q. So that on questions of fact with regard to the condition of that child there can be no question of anybody being in a position to contradict Dr. Wickremasooriya? A. Yes.

Q. You were advised with regard to the opinion that Dr. Wickremasooriya was giving and you were going to advise with regard to that opinion and assist counsel to show where he went wrong? A. Not only Dr. Wickremasooriya but all the doctors. 20

(To Court :

Q. Were you not retained to find out the flaws in their conclusions? A. No.

Q. Dr. Wickremasooriya told us this (evidence put to witness) " Last menstrual date 12-7.....premature child "—there he gives 32 weeks and 6 days between 9th August and 26th March? He was there taking the gestation period as the period between insemination and delivery and he says 32 weeks and 6 days was premature? You do not agree with that? A. That is 229 days I do not agree with that because later on in cross-30 examination he says he himself could not be able to make out the difference of a child born between the 8th and 9th month. If he says that and if he says this I cannot reconcile the two.

Q. What he says here merely is that the child's gestation on those data was 32 weeks and 6 days? A. I do not agree with that.

Q. You do not agree that that was the gestation period necessary? A. The gestation period is alright. If you say the intercourse was on that day and the child was born on another date the gestation is 229 days.

Q. You agree that the gestation period was 229 days? A. Yes.

Q. Then he says 32 weeks and 6 days suggests a premature child—40 do you agree with that? A. No. Because to estimate maturity or prematurity you must also calculate from the last menstrual period because all our standards are based on that.

Q. Do you suggest then about prematurity that he does not know what he is talking about? **A.** No, my difficulty is I differed from him but later on I find myself in complete agreement with him on this very point.

Q. "But calculating from the notional date" his answer is 32 weeks is more correct. That is what he says. Earlier he fixes the gestation period as 32 weeks 6 days. The date from coitus to date of delivery?
A. Yes.

Q. Then he was asked to calculate the gestation period from the notional date? And he says no, not the notional period the 32 weeks period is more accurate? **A.** If he says that gestation delivery is 32 weeks how can the notional period also be 32 weeks.

Q. He was asked to calculate from the notional date and he says calculating from the notional date it would not be 32 weeks but calculated from the date of conception it would be so and he says that is the more correct calculation? Do you agree with him? **A.** I do not know what he is talking about here in that sentence. What is contained in that sentence is not clear to me.

Q. Assume this to be the correct explanation and tell me whether you agree with me or not. If Dr. Wickremasooriya says taking the gestation period from the date of conception to date of delivery and finding it to be 32 weeks and 6 days he says that would be a premature child and if he further says that in order to consider the degree of prematurity it is more accurate to consider the conception delivery period of gestation than the notional period do you agree with that? **A.** He has not said that.

Q. If Dr. Wickremasooriya says the gestation period from the conception to delivery has been 32 weeks and 6 days do you agree if he says that in order to consider the degree of maturity it is more accurate to consider the conception delivery period of gestation than the notional date do you agree or disagree with him? **A.** I disagree with him.

Q. Dr. Wickremasooriya has gone on to say that the normal gestation is 265 to 270 days that is variable—then the question was put to him that is calculating from the last date of menstruation and his answer is that is from the date of conception as known. So that his evidence is knowing the date of conception you would calculate the gestation period as 265 to 270 days subject to variation? **A.** Yes.

Q. The calculation according to him he has given as 265 to 270 days?
A. He does not say that. He says that is the normal way of reckoning.

Q. The normal period of gestation is 265 to 270 days and that is variable? That is normal subject to variation. That is from the date of conception as known, to the date of delivery is 265 to 270 days and that varies. Is that right? Do you agree with that? **A.** Yes.

Q. Now will you tell me if that is normal why it was when first I gave you that date 1st January and asked you to fix the expected date

No. 86
Plaintiff's
Further
Evidence
Dr. Thiaga-
rajah
Cross-
examination
—continued.

you gave me the variation rather than the normal? *A.* You presumed that gestation could take place only on the 15th day and I say it can commence at any time.

(To Court :

Q. Is that right or wrong then? *A.* What he says and what is here is different.)

Q. 265 to 270 is the normal period of gestation from the date of conception as known—do you agree with that? *A.* Subject to variation.

Q. 265 to 270 is normal subject to variation? I gave you the case¹⁰ of the lady who was unable to give any other date besides the 1st January. Why did you give me a date with an abnormality rather than taking the normal period? *A.* I agree with Dr. Wickremasooriya because he says it is variable.

Q. I gave you this date I said here was a lady everything about whom you must assume to be normal—she tells you I have had one and only act of intercourse on 1st January and I am now with child, let me know the expected date of delivery, if 265 to 270 days is normal will you tell me why.....? *A.* What I said was this in the case of that woman count 280 days from the last period minus 14—if you reduce the notional period²⁰ it is practically the same. There is no disagreement between what I said and what Dr. Wickremasooriya says now.

Q. Assume everything is normal she is unable to give you any other data only one act of coitus would it not be 265 to 270 days? *A.* It would be 252 to 280 days.

Q. You say that is normal? *A.* Conception can take place at any time.

Q. Assume everything to be normal then what date will it be? *A.* That is you are absolutely sure she is not ovulating between the 14th and 15th day.

80

Q. Assume everything to be normal? *A.* That would be a water-tight case and I would say 280 minus 14 days.

Q. If she said all I know is that I had one act of intercourse and assuming everything to be normal? *A.* 265 days from that date of intercourse plus or minus 15 or 16 days, because these figures might have synchronised 2 days after menstruation or 26 days after the last menstrual flow.

Q. 26 days after would not be normal? *A.* I would still consider it as normal.

Q. You said in normal cases conception took place between the 9th⁴⁰ and 17th day and you cut it down further? *A.* That is what happens in a large number of cases.

Q. In a small minority of cases you say it happens that conception takes place on some other day in the cycle in a fair number of cases? You are speaking from your own experience? *A.* Yes.

Q. You have heard the evidence of Dr. Attygalle—he says this himself? A. I think later on he modifies that and says conception can take place at any time. I think he says it cannot take place if intercourse occurs two days before menstruation.

Q. That is the view that was expressed by Dr. Wickremasooriya but he says it is unlikely to take place before the onset of menstruation? A. In Tweedy the authority I produce there are several instances given.

Q. Dr. Wickremasooriya himself said it is possible but it is extremely improbable that pregnancy would result as a result of coitus 2 or 3 days before the next menstrual period? A. I think he said that. That even while menstruating conception can take place. He also said this and I agree with that and I disagree with this.

Signed R. F. DIAS,
D. J.

Luncheon interval.

27th January, 1943.

DR. THIAGARAJAH. Further cross-examined.

Q. The position I was putting to you doctor when we adjourned was this: Do you agree with the doctors who have given evidence that it is unlikely that pregnancy will result from coitus a day or two before the onset of the next period? A. I do not agree.

Q. It is not likely? A. I would say not unlikely.

Q. Would you agree with the statement that it is possible though unlikely? A. It is possible. I do not agree with the unlikely part of it.

(Dr. Wickremasooriya's evidence put to witness.)

Q. You heard the reason given for its being unlikely—you heard of course that Dr. Attygalle and Dr. Navaratnam say it was impossible?

A. I am on that point in agreement with Dr. Wickremasooriya where he says conception is possible even during menstruation.

Q. You are not in agreement with Dr. Wickremasooriya when he says although it is possible it is not unlikely? You heard the reasons given for it—you disagree with Drs. Navaratnam and Attygalle? A. That is so.

Q. You heard the reasons given by the doctors? A. Yes. I do not agree with the reasons given.

Q. It is correct is it not that before the ovum is liberated the endometrium is prepared for the reception against fertilisation? A. During the first 14 days of the maturation of the ovum in the endometrium is being prepared to receive the fertilised ovum.

Q. During the period the corpus luteum is functioning and keeping the endometrium—in case the ovum is discharged the corpus luteum functions—is that correct? A. It is not quite correct.

No. 36
Plaintiff's
Further
Evidence
Dr. Thiaga-
rajah
Cross-
examination
—continued.

Q. What is it that prevents? A. It is the fertilisation of the ovum which prevents the breaking down of the endometrium.

Q. Doctor, the endometrium only breaks down after a period from the liberation of the ovum? A. The process of disintegration of the endometrium starts from the moment the ovum is dead.

Q. Till the ovum is dead the endometrium has not begun to disintegrate? A. It is being built up.

Q. The corpus luteum has it anything to do with the fact of its not disintegrating? A. The fact that influences destruction is the ovum if it is not fertilised. The corpus luteum begins to retrogress and the 10 endometrium breaks down. If fertilisation takes place it is the very same corpus luteum which has been theoretically termed corpus luteum pregnancy because conception has taken place.

Q. I am dealing with the period when the endometrium has not begun to break down? A. It takes 8 to 9 days to travel down the fallopian tube? A. Yes.

Q. During that time the endometrium has not begun to disintegrate? A. Yes.

Q. Otherwise due to corpus luteum? A. Yes.

Q. It functions for 10 to 12 days? A. Yes. All these physio-20 logical processes are brought about by certain chemical products. Oestrogen is a carbon compound which can be synthetically produced. This is produced during the first 14 days. The corpus elaborates its hormone from this very Oestrogen so that the activity of the corpus luteum is going on.

Q. Will you tell me when the corpus luteum begins to activate? A. My conception of that and in that I find quite a number of authorities because this is not a science or aspect in which one can say things purely on your own scientific investigations because it involves a considerable amount of intricate scientific investigation because you got to do experi-30 ments on animals—we have got to depend on international authorities who have done this work. There is no one in Ceylon who has done it. Therefore what I say is to a great extent influenced by the authorities.

Q. Will you tell me when the corpus luteum begins to activate? A. This corpus luteum begins to function 24 to 48 hours after the liberation of the ovum.

Q. And it continues to function for a period of about 14 days? A. It continues to function until such time as the ovum is fertilised and the ovum must be fertilised within 24 to 48 hours. If the ovum is fertilised it continues to live. It is called the corpus luteum pregnancy. 40

Q. You admitted to me that the ovum must be fertilised within 24 to 48 hours? A. Yes.

Q. The corpus luteum functions for 24 to 48 hours after liberation? A. Yes. It begins to function. It is assuming the function of the corpus luteum.

Q. Will you tell me when the corpus luteum ceases to function?
A. The retrogression of the corpus luteum sets in the moment the ovum perishes.

No. 36
 Plaintiff's
 Further
 Evidence
 Dr. Thiaga-
 rajah
 Cross-
 examination
 —continued.

Q. How many days is that? **A.** If an ovum is said to last for 48 hours the endometrium which is maintained in that condition by the functioning of the corpus luteum begins to disintegrate after the liberation of the ovum? **A.** Yes.

Q. You disagree with the view that it is the stimulus given by the embedded ovum after fertilisation? You disagree that it is the stimulus given by the embedded fertilised ovum that makes the corpus luteum to function? **A.** I quite agree with that.

Q. If it has begun to retrogress within 48 hours and if impregnation takes 11 to 12 days will you tell me what happens in the interval? **A.** I will tell you what happens when the ovum is not fertilised. If it is not fertilised the corpus luteum begins to disintegrate and menstruation will begin. The unfertilised ovum gets washed away. When fertilisation takes place within 24 to 48 hours otherwise the ovum is dead the corpus luteum is still beginning to act. If fertilisation takes place the corpus luteum goes on activating. The output of its hormones has been proved to increase from that time onwards, the breaking process is arrested. Let us theorise the course of the fertilised ovum. It travels from the fallopian tube to the womb. It provides 9 to 10 days for the endometrium to be built up. The ovum is alive from the moment it is fertilised. So no question of endometrium breaking down comes up. Your corpus luteum begins to degenerate. This corpus luteum continues to function as the corpus luteum pregnancy.

Q. The continuing function is dependent on what? **A.** The stimulus to the activity of the corpus luteum is the fertilization of the ovum, and the ova to be alive must be embedded.

Q. Function as a result of what? **A.** The assimilation of hormones.

Q. Hormones created by? **A.** The corpus luteum produces two hormones one Oestrogen and Progretrogen. The corpus luteum is not autonomous. It is one of the ductless glands that produce hormones. It is really under the control of the pituitary glands.

Q. The hormones must be absorbed into the blood stream before they can have any action? **A.** On that matter there is no reliable authoritative opinion, how they are absorbed. What precisely and how precisely the pituitary functions we do not know. Particularly to this question of pregnancy they are physical phenomena which are closely associated with life.

Q. You say it is not possible or the hormones must appear assimilated in the blood stream before they can produce the results? **A.** Not in all cases. To prove that point the foetus has pancreas. In diabetes these foetal babies are bigger. In diabetes the gland was not so. Pancreas and insulin is a product which finds its way..... Coming to the hormone a

No. 86
Plaintiff's
Further
Evidence
Dr. Thiaga-
raja
Cross-
examination
—continued.

deal of insulin gets into the circulation. But in the case of diabetic mothers the foetal pancreas is activated but there is no foetal circulation which goes on. There is no direct evidence that this foetal pancreas throws its insulin into the circulation. There are so many conjectures. Last year's book is obsolete this year. This is a very uncertain ground. We have our conjectures and facts based on experiments on animals.

Q. The results of those experiments indicate that the hormones must get into the blood stream? *A.* Yes. That is not the only method.

Q. That is the accepted method? *A.* That is one method.

Q. You will admit the fallopian tube is a tube and is not a mucus membrane which will absorb? *A.* It does not absorb at all.

Q. While in the fallopian tube there can be no assimilation in the blood stream of hormones? *A.* Yes.

Q. So that the present theory is that it must be assimilated in the blood stream and while.....? *A.* I do not say there are no other avenues of absorption.

Q. While it is in the fallopian tube? *A.* There may be emotional shock stops menstruation. How do you account for it. There is no direct means of communication. Shock, heterogenous impulses they stop menstruation. The whole process of these ductless glands are completely at a stand still. How do you account for it.

Q. I am only dealing with that which is advanced so far? *A.* You agree with me that the general opinion is that the hormones do not function do not have any results till they are assimilated to the blood stream? *A.* In the present state of knowledge I will not commit myself to anything.

Q. Is that not the accepted view? That the hormones must get into the blood stream before they can produce the results? *A.* Yes.

Q. You also agree with me that so long as the ovum was in the fallopian tubes hormones could not have been assimilated into the blood stream? There is no mucus membrane of the fallopian tube which absorbs? *A.* What is there to prevent the secretion being absorbed by the blood vessels in the fallopian tubes.

Q. I am not asking you about theories and possibilities—what are the accepted views? *A.* There is nothing to say that we cannot accept the view that because the fallopian tube as a mucus membrane the secretion cannot be absorbed. The absorption can take place through the blood vessels through the lymph.

Q. Which portion of the intestinal track? *A.* There is a small bowel.

Q. Is that absorbent or not? *A.* Yes.

Q. The fallopian tube is not an absorbent? *A.* I gave the instance of the intestine as one absorbent.

Q. The fallopian tube is generally not believed to be an absorbing track? A. It does not absorb but the blood vessels in the fallopian tube I cant deny.

No. 36
Plaintiff's
Further
Evidence
Dr. Thiaga-
rajah
Cross-
examination
—continued.

Q. Is there a recognised writer who puts forward the theory that the lymphatic blood vessels of the fallopian tube do absorb? A. Wherever there is blood it can be absorbed. It is matter of elementary physiology.

Q. You do suggest that there is an absorption of the hormones whole the ovum is in the fallopian tube? A. There may be.

Q. You suggest there is? A. I will not deny the possibility.

10 Q. Will you agree with me that the accepted view is that there is none? A. I am not aware of any such view expressed authoritatively. If you can show me I will agree that I am wrong.

Q. Have you come across in any treatise dealing with the question any suggestion of absorption of the ovum while in the fallopian tube? A. Sir Robert Mayer who is the one who postulated the theory about the integration of the ovum. He says the stimulus in the corpus luteum is from the fertilised ovum. What is the inference? That the ovum has an effect on the corpus luteum.

Q. How we do not know? A. It may be through the blood
20 vessels. Nobody can dogmatise.

Q. You told me that this is a field which has got to be improved upon? But so far as it goes in the treaties you have read up so far do you find anybody who says as a possible means of absorption the fallopian tubes? A. I accept the view. We have got to find reasons for cause and effect. Here is an ovum and here is a corpus luteum which seem to be corelated. We know that the corpus luteum produces hormones. We know also that the production of corpus luteum depends on whether the ovum is fertilised or not. There must be some change in the ovum which either directly or indirectly influences the corpus luteum. How it acts I
30 say I cannot say, but if you press for my view I might venture to suggest it might be by being absorbed from the human fallopian tube or the pituitary comes in at this stage. It is the master of glands. We do not know; we cannot question how it can act or how it cannot act. It is some inexplicable agency of the pituitary glands. I do not want your view of the matter nor what might be the development of the science. You have read certain treaties on this question. I ask you whether there is any statement in any one of the authorities any statement of any of the writers on this question that the fallopian tubes is an absorbent either by the lymphatic blood vessels or otherwise or that the hormones are absorbed
40 in the fallopian tubes? A. I think Cameron says something about it.

Q. (Cameron handed). Hormones are absorbed while the ovum is in the fallopian tube? A. (Witness looks through the book). I have got to go through the book.

Q. You have notes of yours? A. Not on this.

Q. You say there is a passage? A. I think there are.

No. 36
Plaintiff's
Further
Evidence
Dr. Thiaga-
rajah
Cross-
examination
—continued.

Q. I put it to you that Cameron, or anybody else has not put forward this theory yet that hormones are absorbed in the fallopian tubes? A. I am not prepared to accept that statement.

Q. You have made researches for the purpose of this case? A. Yes.

Q. You heard Dr. Attygalle's evidence how hormones are assimilated when the ovum is fertilised? A. I was not there at the time.

Q. You heard his explanation that the corpus luteum begins to function and that it begins to retrogress after 12 days? A. I was late that day after lunch. 10

Q. He said the corpus luteum functioned for 12 days. If the corpus luteum is not fertilised the corpus luteum begins to retrogress if it was fertilised it takes time to travel down and a couple of days to get embedded and once it was embedded then by coming in contact with the wall of the uterus the hormones were assimilated to the blood stream and had the effect on the corpus? A. Can you show me one authority which mentions that?

Q. That was the position taken by Dr. Attygalle. You read up that evidence? A. Yes.

Q. That evidence indicated clearly that he was making that the 20 hormones had to enter the blood stream in that form before they acted on the corpus luteum? You say that they absorb while the ovum is in the fallopian tube? A. There is no expert who has set down this one possible theory that hormones are absorbed while the ovum is in the tube. It is put on it. I did not think you will question me on all this.

Q. In the morning I put it to you that a premature rupture of the membranes was a rupture before the full dilation of the os? A. I say with the labour the first stage is the dilation of the os.

Q. When the os is fully dilated the membranes are ruptured. A premature rupture was a rupture at any stage before the complete dilation. 30 You said it was an early rupture? A. Yes.

Q. You restricted rupture to the case.....? A. Where the rupture takes place first and pains come later. That is premature rupture.

Q. Can the os dilate without pains? A. Pains come long before.

Q. Can the os dilate without pains? A. Some people have never realised they were in pain and they delivered.

Q. Some women suddenly find they have delivered the child before any pain? A. Yes. Some few.

Q. I asked you why you would not call that a premature rupture of the membranes? At a stage before the os has fully..... dilated? A. 40 I would not call it premature.

Q. Would it be correct to call it a premature rupture? A. I would call it an early rupture.

Q. Would it be correct to call it a premature rupture? *A.* No. Strictly speaking it is incorrect.

Q. Would it be correct to call it a premature rupture? *A.* No.

Q. Have you ever heard it called a premature rupture? *A.* Some people may call it.

Q. The combined treatise of Obstetricians and Gynaecologists Edinburgh school—Counsel reads Monroe page 365? *A.* In a normal case the child comes out with the hind waters.

Q. Doctor, does the pelvis dilate owing to.....? *A.* The neck of the womb is dilated by this bag of waters. Then the os is fully dilated, the membranes rupture. It will not happen in normal cases. In those cases if the membranes rupture you must call premature rupture.

Q. Because they have ruptured before what? *A.* Before the full onset of labour.

Q. Before the full onset of labour if the membranes rupture? *A.* In abnormal cases. Generally speaking the os begins to dilate and the membranes enlarge. In the normal presentation the head comes first there is no deformity in the pelvis. It does not mean that membranes must hang on to the full term. We cannot say it is premature rupture of the membranes.

Q. The point I am making is that the premature rupture is a rupture before it is due is called a premature rupture? *A.* Before labour pains are due in a normal case.

Q. Whether in cases of abnormality or not this book sets out premature rupture of course in cases of deformity, etc., but whatever the cause the word "premature" is used in relation to the stage of labour? *A.* Yes.

Q. It is correct? *A.* I cannot say anything in it. In abnormal cases if the membranes rupture you can call it a premature rupture.

Q. Which takes place before the stage of labour at which the membranes should rupture would be a premature rupture? *A.* Yes.

Q. A rupture caused by an abnormality which takes place before the stage of labour at which the membranes should rupture is a premature rupture? *A.* I will concede that.

Q. Dr. Wickremasooriya has told us that it is a mature child? *A.* Yes.

Q. That it was a child of complete uterine development? *A.* Yes.

Q. You agree with me that uterine development was the period from conception to delivery? *A.* Yes, from the time the foetus came into existence.

Q. Dr. Wickremasooriya has described this child.

Q. Dr. Wickremasooriya is competent to judge by appearance the maturity of the child and whether its uterine development has been complete? *A.* Yes.

No. 36
Plaintiff's
Further
Evidence
Dr. Thiaga-
rajah
Cross-
examination
—continued.

Q. You say the uterine development is between conception and delivery? **A.** Yes.

Q. The only possible date of coitus is the 9th August and date of delivery as 26th March. (Dr. Wickremasooriya's evidence put to witness). With those statements of Dr. Wickremasooriya you disagree? **A.** Does Dr. Wickremasooriya say he can distinguish an 8-month child and a 9-month child. Has he said that anywhere?

Q. Do you agree or disagree? **A.** I agree with some qualification.

Q. What is the qualification with which you agree? **A.** If those 10 dates are all reckoned from the gestation period that is to say if all those periods represent the gestation delivery period that is not correct. If those periods are from the last menstrual period to delivery they are correct.

(Dr. Wickremasooriya's evidence put to witness). **A.** I agree with certain reservations.

Q. Dr. Wickremasooriya told us earlier.....you say without the last menstrual date you cannot give an answer? **A.** I will estimate maturity and immaturity from the notional date the last menstrual date, because all our standards are based on it. This is the yard measure, we have. There is no other accepted yard measure anywhere. I would not 20 express an opinion in regard to maturity or immaturity on this gestation delivery period because it is a completely indeterminate quantity in a good number of cases.

Q. You say Dr. Wickremasooriya was prepared to state on this data 9th August that the child born on the 26th March could not have had the appearance of maturity that he—you say he has answered it on insufficient data? **A.** I would want more data.

Q. You can't answer it without more data? **A.** I cannot.

Q. Do you say Dr. Wickremasooriya could not have answered without more data? **A.** Anybody could. He has given the answer. 30

Q. Were you in Court when he gave that answer? **A.** Yes.

Q. Is it a question to which he could not have given an answer on only this data? **A.** Medico legally I would not give an answer on those grounds.

Q. Is it an answer which Dr. Wickremasooriya as an Obstetrician with experience really could not have given an answer on this data? **A.** He has given the answer but I do not agree with that answer.

Q. Do you say that the data is insufficient for the answering of that question? Would that data be insufficient to a medical man? **A.** To state emphatically that a child is mature and immature to a certain definite 40 extent.

Q. Dr. Wickremasooriya delivered the child. He has described the degree of maturity. Given the date of coitus and the date of delivery do

you say that on that data it was not possible to express an opinion on the question of maturity or prematurity of that child? *A.* He can express it but there is a margin of error in it.

Q. You told us you had 60,000 cases in your three years in the Lying-in-Home? *A.* Yes.

Q. He has been there 18 years? *A.* Yes. I do not question Dr. Wickremasooriya's ability but Dr. Wickremasooriya himself has admitted it that he cannot make out the difference of a child born in the 8th month and 9th month or the 9th and 10th lunar months calculating
10 from the last menstrual period.

Q. Dr. Wickremasooriya has told us not once but three times over that this child if conceived on the 9th August would have shown a degree of prematurity which he did not find? Do you disagree with that? *A.* He has said that.

Q. You disagree with that? *A.* I disagree.

Q. You say he could not possibly have come to that conclusion? *A.* Yes.

Q. Just enumerate the characteristics of a full term child? *A.* A full term child calculated from the last menstrual period.

20 *Q.* The characteristics of a fully developed child? *A.* Weight.

Q. Normal Ceylonese child? *A.* 6 to 6½ lbs., length 20 to 22 inches. Absence of lasungo. Presence of sub-cutaneous fat the child, cried lustily and takes to the breast vigorously, the toe nails and finger nails have reached to the tips of the fingers and beyond, testicles are in the scrotum, the posterior fontennial is closed. I will not go by hair. There is a lot of bald children born. Colour is a variable factor. It is a little pinkish in colour. There is an extra degree of pink in the premature child. Skin is smooth not wrinkled. The movements and the cry.

Q. And also it is correct you cannot go by anyone of these charac-
30 teristics? *A.* You can't go by anyone.

Q. You look at the general appearance? *A.* Yes.

Q. You take them in at a glance? *A.* Yes.

Q. Dr. Wickremasooriya has told us with definiteness that the child weighed 6½ lbs. (Evidence of Dr. Wickremasooriya put to witness.)

Q. As far as skull sutures you do not examine? *A.* They are fairly obvious.

Q. The signs are sufficient signs to.....? *A.* Those are the characteristics of a mature child.

40 *Q.* And can an expert by looking at the child say that it was a mature child? *A.* A child can present these characteristics between the 8th and 9th month. It can attain to maturity at some stage between the 8th and 9th month. It can have subcutaneous fat, it can have no lasungo. With regard to testicles 10 per cent. of the mature babies have undescended testicles and 30 per cent. premature babies have undescended testicles.

No. 36
Plaintiff's
Further
Evidence
Dr. Thiaga-
rajah
Cross-
examination
—continued.

That is why in view of the characteristics of a mature child are presented by a baby that is born at any time after the 36th week that you cannot definitely come and say this child is merely judging from appearance it must have been conceived 280 days from the last menstrual period or 265 days.

Q. Dr. Wickremasooriya said 37 to 40 weeks? A. Why because these characteristics are present in babies born in the 27th week to 40th week.

Q. Dr. Navaratnam has said.....? A. I agree with Dr. Wickremasooriya.

10

Q. After all this is a matter of experience? A. It is not very difficult for a man with some experience. A man has not got to be 18 years in the Lying-in-Home. A person who has seen 60,000 pregnancies is competent to express an opinion.

Q. Are those cases you have done yourself? A. 30,000 of these cases have been through the Anti-Natal Clinic or through the hand of the Registrar. I have scrutinised everyone of the bed-head tickets. The experience of delivery wherever they are available is..... I think I can claim to know a little bit on this particular question.

Q. 60,000 is the number of cases which have gone through the Lying-in-Home? A. 30,000 outdoor and 35,000 indoor.

Q. Do you claim to have knowledge of all the 60,000? A. No.

Q. Of conditions associated with the pregnancy. How much will that come to a day? A. About 50 cases a day.

Q. You were throughout dealing with 50 cases a day? A. Yes.

Q. Dr. Navaratnam has been there in that Lying-in-Home for a longer period? A. Yes.

Q. Neither of them have claimed to have dealt with so many cases? Have they? A. I am the Registrar. Everything has got to go through me. I go through every bed-head ticket. Dr. Navaratnam never did the work of Obstetric Registrar.

Q. You are claiming this experience by doing the Registrar's job? A. Not merely this. If it is weight you get it in the capacity of registrar. In looking at the baby that depends on the fact that I see and deliver as visiting obstetrician.

Q. How many do you do a day? A. I have an average of about 50 or 60 cases in the ward. I see every mother and every baby. May be the same baby and mother.

Q. Apart from being the visiting obstetrician you are also the Registrar? A. Yes.

40

Q. You have got administrative functions too? A. No. Teaching the students and in charge of the statistical survey and study of the institute. Statistics of all the cases that have been admitted for the purposes of the Administration Report and for my own edification. It is from that experience that I am able to publish an article or read a paper.

Q. You say it does not need Dr. Wickremasooriya's experience to judge? A. To judge a simple matter like this.

Q. With his experience it will be all the easier? A. It follows.

Q. Why is it you are suggesting that Dr. Wickremasooriya is making a mistake.....? A. The difficulty is I cannot understand how he can say this. That in this instance it must be a mistake but later on he says he cannot distinguish a child within the 8th and 9th month.

Q. You heard Dr. Attygalle say that if Dr. Wickremasooriya having seen that child and delivered that child says it must be mature it would be futile to contradict him? A. I heard him say so.

Q. You disagree with him? A. I disagree with him there on that point at that moment. But on that very same point I disagree with him again because he cannot distinguish the child. I can't agree with both.

Q. You do not agree with Dr. Navaratnam either that Dr. Wickremasooriya having given those signs of development that the child could not possibly have been conceived on the 9th August? A. When I say I do not agree with Dr. Attygalle is in regard to the statement he made about the infallibility of Dr. Wickremasooriya.

Q. He told us that if Dr. Wickremasooriya delivered a child and stated that the child showed a degree of maturity which considering a particular period of gestation it would not have that it would be futile to contradict him, do you agree with that statement of Dr. Attygalle? A. How can I answer.

(I disallow the question.)

Q. Would you agree with Dr. Attygalle that given those signs of development that Dr. Wickremasooriya found and taking all the data namely those signs of development the fact that in October Dr. Wickremasooriya found the lady was in the 14th to 16th week the fact that he found foetal heart-beats in December and known date of coitus being the 9th and the date of delivery 26th it is not possible for the child to be conceived on the 9th? A. That is their opinion.

Q. Do you disagree? A. I will not say that it was impossible for the child to have been conceived on the 9th August.

Q. You disagree with Dr. Attygalle? What would you say? A. If I were to say that that child presenting the characteristics of a mature child born on the 26th March that is 258 days calculated from the last menstrual period could not have been conceived on the 9th August I would have to say so basing my opinion on certain data everyone of which is scientifically open to dispute at this moment.

Q. In giving your answer setting out your disagreement with the other doctors you said this: On the last menstrual period on the 12th July that is 258 days from the last menstrual period—that is one of the factors that makes it impossible for you to agree with the other doctors? A. I do not say that she had a period on the 12th July but it is the 12th July that causes the disagreement.

No. 36
Plaintiff's
Further
Evidence
Dr. Thiaga-
rajah
Cross-
examination
—continued.

Q. That is if the 12th July be eliminated will there be agreement between the doctors? A. Yes.

Q. Conception could not have taken place on the 9th August? Conception must have taken place some time earlier? A. Yes.

Dr. Wickremasooriya never used the term full-term child. Whenever he used the word full-term child it implies that he means 280 days calculated from the last menstrual period. I can't remember all the words.

Q. If Dr. Wickremasooriya made use of the expression full term would that make any difference to your view in this case? A. I do not think it would alter it. If he has said that whenever he says a mature 10 child he means a full-term child I disagree.

Q. You seemed to make a suggestion yesterday that if the first child was 7 lbs. and later child was only 6½ lbs. from that the conclusion you would come to was that the child was premature? A. May I know what I said (evidence read) I said that.

Q. Do you suggest that is the only inference that you can draw? On weight only? A. Yes. Or that she may have had a prolonged illness or she must have been suffering from malnutrition or there may have been a congenital deformity.

Q. Merely because the second child was lighter you cannot draw any 20 inference? A. In normal people the subsequent babies are heavier in weight. Dr. Attygalle has also said that. I still reiterate it.

Q. You say that when the first child is 7 lbs. and the second child is 6½ lbs. that is the inevitable conclusion if there are no adverse circumstances? A. If you can eliminate all these adverse conditions if the first child was 7 lbs. the next child would be heavier.

Q. It presumes the same parentage? A. Yes.

Q. Dr. Wickremasooriya told us the uterine life was 34 weeks the signs of prematurity would be noticeable to a doctor. Do you agree with that? A. In other words you mean gestation delivery interval. If 30 you call upon me to express an opinion in regard to maturity and prematurity I will not say it with any emphasis that the child is mature or premature if the data given to me only are the date of conception and the date of delivery.

(To Court :

Q. We still come back to 12th July? A. Yes.)

I gave the extreme limits of conception also.

Q. You told us yesterday that in the last few weeks the child only grows in weight? A. In the last two or three weeks.

Q. Most of the development takes place in the last 3 or 4 weeks? 40 A. Yes.

Q. There Taylor says in the last 8 weeks? A. From my own observation I would restrict it to the last month.

Q. You say that the last month the child only puts on weight? A. The characteristics of a mature child are present from the 36th week onwards. All these signs I have mentioned which characterise a mature child are present from the 9th month.

No. 36
Plaintiff's
Further
Evidence
Dr. Thiaga-
rajah
Cross-
examination
—continued.

Q. Between the 36th week and 40th week you can't distinguish with a perfect degree of certainty? A. I will not. If I may add this and swear to it that I am absolutely certain. I can tell students but it is different coming here and saying so in a Court of law. 35th week I can. Any time from the 34th week you can definitely say. Anywhere between 10 the 37th to 40th week it will be very difficult. I would be careful about the 36th week. I agree with Taylor.

Q. You agree the last 8 weeks of gestation is a period during which the development is most marked? A. One has no method of seeing that.

Taylor page 47 put to witness. A. I accept that.

(Page 336 put to witness). A. That is the nails and other signs whereby Dr. Wickremasooriya said he judged maturity of development during those 8 weeks.

Q. As a matter of fact Taylor gave the table but nobody can say 20 with certainty? A. No.

(Page 336 put to witness). A. In other words that is from the 32nd week most of the signs of maturity are present. Other signs of maturity are there earlier.

Q. Nails of feet hair, descended testicles they come along at the last 8 weeks? A. Yes.

Q. We were on the question of the calculation of gestation period from the last date of menses. You told counsel in examination in chief the date of delivery was 26th March and you fixed the date of conception as 19th June to 20th July? A. Yes.

30 Q. That is to say given the date of delivery 26th March and you were asked the period during which the child born with those characteristics could have been conceived you gave one month's space? A. 28 days.

Q. That is to make allowance for what happens—existence of gesta-
tion being protracted or advanced? A. That is not the reason. I
gave that for this reason. For the reason that you have just given a
little while ago that is a mature child can be born 280 days after the last
menstrual period. A child born between 40 weeks after the menstrual
period presents the characteristics of a normal child. As explained a little
40 while ago in which Dr. Wickremasooriya and Taylor are agreed that a
child presenting the characteristics of a mature child can be born any time
after the 36th week. Therefore in this particular instance the limits of
conception would be 280 days and up to 252 days.

No. 36
Plaintiff's
Further
Evidence
Dr. Thiaga-
rajah
Cross-
examination
—continued.

Q. So that you say a child having those characteristics can be born any time during the last month of gestation? **A.** Incidentally this explains my previous point that is to say if a woman conceived 2 days before or 2 days after menstruation the child born at the end of 280 days is the mature child. It is these 28 days that makes the difference.

Q. You have told us and with some slight variation how the doctors are agreed there is a period starting from 36 to 40 according to which you can't say the child is premature? **A.** And be emphatic about it.

Q. It is to make allowance for that that you fixed the time as 252 or 280 days back? **A.** No. We have not fixed the 280 days. 10

Q. It is a biological fact. The duration of gestation is 10 lunar months. My point of view is where you were given the date 26th March by Counsel for Mrs. Alles. On 26th March there was a child born bearing the characteristics of a full-term child—on that basis you were given by counsel for plaintiff date of delivery you were given the data that the child had characteristics of a full-term child and you were asked to fix the date of conception—then you gave the date 19th June to 20th July. That is you fixed 19th June to 20th July a period of 28 days because there are 28 days according to you in the period of gestation during which you can't distinguish the child is mature or not? **A.** That is so. 20

Q. For the last 28 days of gestation the child will bear the same signs and will only be differing in weight? **A.** The main characteristics are there.

Q. From the 36th week to 40th week the main characteristics are there? **A.** Yes.

Q. You have given the date 36 to 40 weeks? **A.** Yes.

Q. Making full allowance for the period of final development? Those are the limits during which period if conception took place the child presenting the features of a mature child..... Outside those limits the child would have noticeable appearances? **A.** Yes. Prematurity or 30 post-maturity.

Q. The further away you go away from those limits the greater the degree of prematurity or post-maturity? **A.** Yes.

Q. If it goes 3 weeks from that you will have clear signs of prematurity? **A.** I agree with Dr. Navaratnam and Dr. Wickremasooriya on those points.

Q. All your evidence was on the presumption that 9th August was the only date of coitus? **A.** Yes.

Signed. R. F. DIAS,
D. J. 40

Case for tomorrow.

Signed. R. F. DIAS,
D. J.

28-1-43.

Counsel as before.

DR. THIAGARAJAH affirmed.

Re-examined.

Q. You passed out as a Licentiate in the Ceylon Medical College. You had a very distinguished career in the College, you passed in the first class in all your examinations? A. Yes.

Q. Immediately after that you were offered a post-graduate Government Scholarship and you were the first to be appointed to the services 10 where there was a long waiting list? A. Yes.

Q. You were for three and a half years after that in the Dental Hospital, Colombo? A. Yes.

Q. You worked under all the well-known physicians and surgeons of the day? A. Yes, Dr. A. M. de Silva, Dr. Lucian de Zilwa, Dr. Spittel. Dr. Lucian de Zilwa is a gynæcologist and obstetrician. He is living. He has retired but he is still a consulting gynæcologist.

Q. According to the terms of the Scholarship the scholar is required to choose his subject he specialises in? A. The Scholarship is granted to the scholar in order that he may go to England and specialise in the 20 subjects he chooses and which are suited to him and I selected obstetrics and gynæcology.

Q. You proceeded to England after 2½ years' work here and worked in what hospital first? A. After 3½ years. I then worked in London, Manchester, Edinburgh and Dublin. In London in the Middlesex Hospital.

Q. - In Manchester in what hospital did you work? A. I worked in two St. Mary's hospitals one for obstetrics and one for gynæcology. I held two appointments there as resident officer.

Q. And you were paid? A. Yes, I was lucky in that I got a paid job. I remained in England for about one year and 8 or 9 months.

30 Q. Why did you choose the Edinburgh Scholarship? A. Because in the United Kingdom the only College of Surgeons that affords a Diploma which entitles one to specialise in gynæcology is that.

(To Court :

Q. You were interested in this particular branch of study? A. Yes.)

Q. You were asked whether Dr. Theobald is also not a F.R.C.O.G.? What are his qualifications?

(Mr. Wickremanayake objects. I think there is some cross-examination with regard to Dr. Theobald and I think the question can be put.)

40 Q. He is a Foundation Fellow of the Royal College of Obstetrics. When was the Fellowship founded? A. I think it was in 1928.

(To Court :

Q. Why has such a distinguished man come to a place like Ceylon? A. I do not know.)

No. 36
Plaintiff's
Further
Evidence
Dr. Thiaga-
rajah
Re-
examination
—continued.

Q. He is an M.D. of Cambridge ; M.R.C.P., F.R.C.S. and F.R.C.O.G. On your return to Ceylon did you make a special study of any particular subjects appertaining to gynæcology or obstetrics? **A.** For a considerable time I was interested on the subject of menstruation and irregular bleeding and I have written two articles on them.

Q. Read before the Ceylon Branch of the British Medical Association? **A.** Yes.

Q. Is there anybody to your knowledge in Ceylon who has made a special study of them? **A.** Not to my knowledge.

Q. Have you made a special study of infantile deaths and premature babies? **A.** I read a paper at the opening of the section in Obstetrics and Gynæcology. It was read at a conference and for that purpose I had to analyse 3,051 infant deaths amongst 38,555 consecutive deliveries in the Lying-in-Home in order to find out the number of premature babies. In this 38,555 deliveries I was able to ascertain that 49 per cent. of infant deaths that occurred within one month was due to prematurity, and I claim I have some knowledge. 49 per cent. of the infants that die within the first month of their births are due to prematurity. I studied the features and put them on record to a large extent and the characteristics of premature babies. 20

(To Court :

Q. Do I understand you to say that you looked at all those babies or did you go upon records? **A.** A good bit of them were from the records, the weight, length and so on.)

Q. Usually it is thought in your profession that women ovulate during the mid period of her cycle? **A.** The current view on that point amongst the authorities is that in a large majority of cases the normal woman menstruates at any time between the 12th and 15th day and a large number of authorities too maintain that even in the normal woman ovulation takes place at any time of the cycle. 30

Q. By a normal woman you mean? **A.** Normal in the sense that she has no demonstratable evidence of disease, a woman whose functions in regard to her reproductive capacity are normal.

Q. Do you say that a normal woman may ovulate at any period of menstrual cycle would it then necessarily follow she can also conceive at any period of that cycle? **A.** Yes if there is an appropriate intercourse

(To Court :

Q. She can have a fruitful coitus at any time? **A.** Yes.)

Q. Would that apply to both woman with a regular menstrual cycle as well as irregular menstrual cycle? **A.** It would but with a greater degree of uncertainty in the case of women with irregular cycles because we do not know whether a particular bleeding in her case was preceded by ovulation or not.

Q. So your view then is that irrespective of the proximity of the menstrual period conception can take place? **A.** The most convincing

proof that I have is that there is no recognised safe period so far proved to be successful. The safe period of Ogineau and Knaus has been successfully proved to be a failure. In other words they say that ovulation only take place between the 12th and 17th day and therefore they restrict intercourse in that period but in my own experience I have encountered cases where this advice has been given with reservation but they have come back and said this, see what has happened.

No. 36
Plaintiff's
Further
Evidence
Dr. Thiaga-
rajah
Re-
examination
—continued.

Q. In Court you have heard the view expressed that pregnancy cannot possibly result if fertilization takes place two or three days before the onset of the next period? A. Pregnancy can follow.

Q. Why there would be the menstrual flow coming in and there would be the wash out—what are the reasons for that proposition? A. Because pregnancy has supervened in cases where one solitary intercourse did take place one or two days before.

Q. In other words if there is fertilization two days before the onset of menstruation pregnancy cannot follow is mere theory? A. It was mere theory.

(To Court :

Q. Today's theory becomes tomorrow's truth and sometimes the theory is knocked on the head? A. Yes.)

Q. How does the fertilized ovum inhibit menstruation? A. That is one of the points on which knowledge is very very insufficient and unreliable but if you ask me what I think of it I say it might be due to absorption of some substance produced by the developing ovum or it might be due to nervous impulses through the sympathetic nervous system, for instance if a woman has had an intercourse and fears pregnancy and thinks she has been caught her period stops but eventually it is found that she has not been pregnant. There are very subtle processes working which nobody can give us. Thirdly you find certain factors such as shock, fear and various complexes that bring about a cessation of the menstruation, and it may also be due to humeral transmission of certain substances. Humeral is one of the tissues. Through any channel that is capable of absorbing blood lymph and various avenues of absorption or it may be due to electrical impulses. We know the ordinary processes of thinking, it has been demonstrated for instance that the human brain produces electrical energy. Now we have a scientific explanation for that, it can be proved that the mechanism of the working of the endometrium glands is very subtle. These glands are in association with the sympathetic or automatic nervous system.

Q. It was put to you yesterday that the fellopian tubes had no absorptive properties and would not absorb the hormones? A. That is not correct. It has got a mucus membrane and it has got a special peculiar type of epiterium which can absorb. The epiterium covering the mucus membrane in the fellopian tube is the same as in the uterus. Yesterday I mentioned that I would produce Cameron. I was able to find the relevant passage in Cameron. They have shown that if you instil progros-

No. 36
Plaintiff's
Further
Evidence
Dr. Thiaga-
rajah
Re-
examination
—continued.

tozone into the lumen of the uterus that is into the cavity it is absorbed and the fellopian tube has got the identical mucus membrane. The fellopian tubes and the uterus are developed on the same original embryonic tissue. The secretion that arises from the same epibromic development reacts similarly to chemical substances. For these reasons I say that there is no reason to say that the fellopian tubes cannot absorb.

The Court asked me just now whether the mucus membrane lines the fellopian tube. I refer to Johnstone. The passage in Cameron on page 277 means that if you instil some substance into the lumen that is the cavity then the mucus membrane absorbs it. In Johnstone there is a passage which says that the fellopian tube has a lining of mucus membrane. 10

Q. Now supposing a woman came to you and said I am pregnant how will you say if she asks when she will get her baby? A. I must first satisfy myself that she is pregnant and I examine her. She comes to my consulting room and she says that she is pregnant and I want the data. I will ask her to sit down and pull out a card index and take her name and go back on her menstrual history—when did you attain age, what were your periods like, how long did they last, once in how many days, what was the cycle, are they regular, when were you married. After the marriage was there any change in the menstrual supply, when did you have your last period after that have you had periods. Then I make a mental note and say to myself there is presumptive evidence that she is pregnant because her periods have been regular and they have stopped. That is the history and then I proceed to examine and I ask her when did you have your last menstrual period and get the date and calculate 280 days and tell her her expected date is so and so roughly. But suppose she has come to me in the 3rd or 4th month I will check up and see if the last menstrual period was on such a date, today being such a date how many months advanced is she in pregnancy calculated from the last menstrual period. Then I bring to bear upon the case what are the other physical signs you expect to find in a woman pregnant 22 weeks how much is the fundus, is there any quickenings, does she feel the baby's movements and if it is the period of pregnancy when the heart, sounds could be heard I would expect to hear them and look for them. By now I would have been almost sure that she is pregnant. That does not finish the complete examination there is the blood pressure and things like that. But I would be for the moment satisfied that she is pregnant and she is so many months calculated by the last menstrual period. We never ask them when did you have intercourse with your husband, nobody does it and it is not practicable. 20 30 40

(To Court :

Q. Normally when a woman is living with her husband she cannot say which coitus produced the child.) Now suppose she said that she is a woman with a normal menstrual cycle and she can give to you the date of her last menstrual period and if on examination you found that the physical signs indicate that that could not be the period what would you

do? *A.* That is where she says she does not know the last menstrual period. Then in the card I make the query regarding the l.m.p. and I make a note of the size of the fundus above the symphysis in inches.

No. 36
Plaintiff's
Further
Evidence
Dr. Thiaga-
rajah
Re-
examination
—continued.

(To Court :

Q. Is it medical etiquette to accept what the patient says as correct?

A. No. For various reasons, people forget or they make *bona fide* mistakes and we have to check it.)

Q. Do you tell the patient so? *A.* Yes, I would tell her this does not fit in with your story you come back in a month or so and I will be able to tell you more definitely.

(To Court :

Q. In other words medical science can reach a diagnosis irrespective of what the patient tells you? *A.* Yes.

Q. Take the case of appendicitis if the patient tells the doctor he has no pain when he is pushed can the doctor find out he is having appendicitis?

A. Yes, he can.)

Q. In the case of an irregularly menstruating woman what questions would you put to her at the first examination? *A.* I would go through the same routine again and get at the last menstrual period.

20 (To Court :

Q. That last menstrual period is vital? *A.* It is very.)

Q. Without it one could not say with any definiteness the possible or probable date of delivery? *A.* Yes.

Q. Now in this particular case Mrs. Alles, let us assume, that when she saw Dr. Wickremasooriya on 23-10 she said I had my period or a period on 11-8 and Dr. Wickremasooriya proceeded to examine her and he says that his view was that she was pregnant and his view was that she was 15 weeks pregnant? *A.* I will put myself in the place of Dr. Wickremasooriya for the moment. 11-8 is the date you give and you come to me on 23-10. That would be 10 weeks. Well then there is something wrong somewhere either Dr. Wickremasooriya was wrong or the lady is wrong. In other words that was not her period. Anyhow I would not say that I was right regarding the assumption and I would ask her to come back again so that I may ask what about the previous periods and go back to her history.

Q. Now Dr. Wickremasooriya formed the view that she was 15 weeks pregnant from 23-10 if you go back 15 weeks to what date would you arrive? *A.* 9th or 10th July.

Q. Now suppose she had her period in or about the 10th June?
40 *A.* When Dr. Wickremasooriya says 15 weeks there will be a variation of a few days.

(Mr. Wickremanayake says the witness cannot interpret Dr. Wickremasooriya's evidence. Mr. Amerasekera denies that he has attempted to do any such thing. I think the proper way is to put Dr. Wickremasooriya's evidence to the witness.)

No. 36
Plaintiff's
Further
Evidence
Dr. Thiaga-
rajah
Re-
examination
—continued.

Q. Dr. Wickremasooriya examined this patient on 17-12 and he says she was about 23 weeks pregnant at that time and he heard foetal heart sounds what would be the L.M.P.? A. That again comes into July.

Q. About the 9th July? A. 9th with the variation of a few days.

Q. In the 23rd week you would hear the foetal heart sounds? A. Yes.

Q. When could you hear it the earliest? A. 20th to the 22nd. Average would be 22 to 24. At 22 weeks you can generally hear it.

Q. Now Dr. Wickremasooriya saw her in November suppose he saw her on 15-11 in what month assuming it is the 9th or 10th July? A. 18 weeks.

Q. That would be in what month? A. In her 5th month.

Q. On the 22nd November if he examined that would be precisely the same position? A. Just one week more.

Q. On the physical characteristics that Dr. Wickremasooriya has described or which he has obtained in examining the lady her last menstrual period comes to early July the 9th or thereabouts? A. I will check it in another way, shall I. For the present I shall say yes, it seems to tally with the assumption that the last period was about the 9th July. 20

Q. You said you would check it in another way will you please do it? A. Suppose her last menstrual period was 11-8 then I pointed out those physical findings do not fit in with a pregnancy of 11-8 as the last period. Let us go back to June then.

Q. What date would you take? A. I will presume the normal cycle 30 days or 28 days. Then it would have been in June. Let us calculate from the 9th as July is uncertain. On 23-10 in how many weeks will she be advanced in pregnancy, it would be 18 weeks. Then Wickremasooriya should have found it to be not 15 weeks but 18 weeks. I am going by Dr. Wickremasooriya's evidence and that does not fit in. Let us take the other date then. 30

(To Court :

Q. You are now proving that June would not hold. You also held that August cannot be the last menstruation period? A. Yes.

Q. Therefore it must be July? A. Yes.)

Now we will take the 17-12. On 17-12 Dr. Wickremasooriya thought it was 23 weeks. I am proceeding on the L.M.P. being 9th June. Up to December it is 24 and 9 to 17th another one week. That is between the 25th and 26th week. Now the difference between these two is a big difference because at the 23rd week the fundus is below the pubes and there again it does not fit in. 40

Q. Now this establishes that when Dr. Wickremasooriya gives 15 weeks and 23 weeks they are all calculated from the last menstrual period? A. Yes.

Q. If the last menstrual period was 9-7 or thereabouts what would be the expected date of delivery? A. 280 days from 9-7, that is to say April 26th will be the expected date of delivery.

Q. Would it be 26th April? A. April 16th I am sorry.

Q. Of course these babies do not arrive on the exact date they are expected? A. That is our difficulty for practical purposes we generally lay down 280 days but there are so many unknown quantities coming in so that we allow a margin of 14 days this side or that in the case of a regularly menstruating woman and we will not be surprised if she delivers 10 before that.

Q. Now we are talking of the characteristics of those babies that are born can you say that a child bears certain characteristics when the child has had a uterine existence of 8 or 9 months how do you calculate the 6-8 or 9 months? A. There again the only standard is from the last menstrual period.

Q. In fact all your text books when they say a child has certain characteristics at the 8th or 9th month its foetal existence is calculated from the last menstrual period? A. Yes that is so.

Q. In this particular case we know the date 9-8 was the act of coitus 20 and the child was born on 28-3 with regard to any other factor can you express an opinion? A. I will not.

Q. Why, what is the information you want? A. If you can give me the last menstrual period I can reduce this baby to the standard tables that is to bring it down to the characteristics as based on the last menstrual period.

Q. If anybody does would it be correct—if anybody compares the characteristics of this child? A. Scientifically incorrect.

Q. Then assume that the last menstrual period was on 12-7 and the child was born on 26-3 so that the child would have had a notional foetal 30 existence of 257 days. This baby is the result of an intercourse of 9-8 and the delivery being on 26-3 had a foetal existence of 257 days? A. 257 days that would be between the 8th and 9th calendar month or 9th and 10th lunar month.

Q. Could the child be a fully developed child bearing the characteristics that Dr. Wickremasooriya said he observed at the date of birth? A. It could. If I said no, I will be in conflict with all recognised medico legal authorities.

Q. You are aware that Dr. Attygalle was in Court when Dr. Wickremasooriya was giving evidence and he was instructing Counsel?

40 (Mr. Wickremanayake says this is not correct that nobody gave any instructions on medico legal matters and that Dr. Attygalle was only present during part of Dr. Wickremasooriya's evidence. Mr. Ameresekere accepts that.)

No. 36
Plaintiff's
Further
Evidence
Dr. Thiaga-
rajah
Re-
examination
—continued.

(To Court :

Q. Can you tell us the date when you were first brought as a medical expert in this case? (Mr. Ameresekere gives the date and says 30-11-42.)

Q. Is that right? A. Yes.

Q. It was stated yesterday that in the hope of Dr. Theobald coming here a copy of the evidence was sent to him for study? A. Yes.

Q. Was no written statement of the facts given to you when you were consulted as medico-legal expert? A. No. I told Counsel I would not give evidence until I had heard the medical evidence. No written statement was given to me.)

Signed. R. F. DIAS,

D. J.

10

29th January, 1943.

Same appearance as before.

MERITA DE COSTA—sworn.

No. 36
Plaintiff's
Further
Evidence
Merita de
Costa
examination

Q. You were educated at St. Bridgets? A. Yes.

Q. And later in India at Kodaikanal? A. Yes.

Q. When did you come back from India? A. 1939.

(To Court :

Q. Can you give me the date? A. I have no recollection.) 20

Q. When you returned from India you lived with? A. My father and my sister at Merlton.

Q. You took up residence with your married sister? A. Yes.

Q. With whom your father was also then staying? A. Yes.

Q. When did you come to know Dr. Samahin? A. Latter half of August, 1940.

Q. Where did you meet him? A. At a party at Mr. and Mrs. Namasivayam.

Q. After that you met frequently? A. At promenade concerts.

Q. With whom did you go to the concerts? A. With sister, and so Stannie and the Namasivayams and 2nd defendant.

Q. And you used to go regularly? A. Yes.

Q. After that did 2nd defendant become friendly with your family? A. Yes.

Q. And he began to visit you at Merlton? A. Yes.

Q. How often did he come? A. 2 or 3 times a week.

Q. You used to go out with him? A. Yes.

Q. Your sister? A. Yes.

Q. Did you go out alone with Dr. Samahin? A. No.

Q. Your sister? A. With Dr. Samahin and me.

40

Q. Does your sister go out alone with Dr. Samahin? A. No.

(To Court :

Q. Never? A. Never.

Q. If anyone says she did it is a lie? A. Yes.)

Q. You remember the time your brother-in-law went to Jaffna?

A. Yes.

Q. That was on 1st February, 1941? A. Yes.

Q. Did you go to see him off to the station? A. Yes.

Q. Who were there to see him off? A. My sister, Dr. Samahin,
10 my little brother Tony and myself.

Q. How old is Tony? A. 16.

Q. Was he staying at your house? A. Yes.

Q. He had come for the holidays? A. Yes.

Q. You bade him goodbye at the station? A. Yes.

Q. Did he say anything? A. He told Dr. Samahin that he left
plaintiff and me entirely in his charge.

(To Court :

Q. At that date where were your father living? A. In Kandana.

Q. He had left? A. Yes.)

20 Q. After Stannie left for Jaffna did Dr. Samahin continue to visit
you at Merlton? A. Yes.

Q. How often did he visit there? A. Just as usual about 2 or 3
times a week.

Q. Is it correct to say that he came there and stayed to lunch? A.
Never stayed for lunch after Stannie went to Jaffna.

Q. Is it correct to say that he came there in the afternoons and
stayed there till about 5 o'clock? A. No.

Q. You know the guest room at Merlton? A. Yes.

Q. Did he use that room at all? A. No.

30 Q. Did he at any time sleep there? A. No.

Q. You remember your sister going to Jaffna? A. Yes.

Q. Where did you stay during the time she was away in Jaffna?

A. At my uncle's.

Q. Dr. Marcelline de Costa's? A. Yes.

Q. With the baby? A. Yes.

Q. While she was at Jaffna? A. Yes.

Q. You came back to Merlton after your sister returned? A.
Yes.

(To Court :

40 Q. During the time she was away you were with your uncle? A.
Yes.

No. 86
Plaintiff's
Further
Evidence
Merita de
Costa
examination
—continued.

Q. When she came back you returned? A. Yes.)

Q. After that you went away to Bandarawela? A. Yes.

Q. That was in March, 1941? A. Yes.

Q. You stayed at the Solomons'? A. Yes.

Q. You spent your Easter at Bandarawela? A. Yes.

Q. Did Dr. Samahin come to Bandarawela? A. Yes.

Q. When did he come? A. We met him at the Club on Good Friday morning about 10-30.

Q. What did you do that morning? A. We went to church.

Q. After 10-30? A. We were in the Club. My sister wanted to 10 send a basket of vegetables. We were very surprised to see my brother-in-law. My sister and my brother-in-law had a long chat. Dr. Samahin asked Stannie for lunch at the hotel. He said he was not properly clad and as he had a lunch engagement at Welimade he could not come.

Q. Then Stannie went away? A. Yes.

Q. What did your party do? A. We sent the basket of vegetables. We then went to the boarding house. We went in Perumal's car. We asked him to come. He said he had another appointment and went away. We asked Dr. Samahin to lunch.

(To Court :

20

Q. Why did you not ask your brother-in-law to lunch at the Solomons'? A. I did not ask him.

Q. Do you know if your sister asked? A. I do not know.

Q. Do you know why she did not ask her husband? A. I do not know.)

Q. How did you spend the afternoon? A. After lunch we went to Muttetagama's. In the evening we went to Major Fonseka's.

Q. How did you go? A. We went in the car.

Q. With whom did you go? A. With Dr. Samahin.

Q. How did you come back? A. We came back in Major Fonseka's car. 30

Q. What time did you come? A. It was quite late.

Q. Your sister and you came to Mrs. Solomons' direct? A. Yes.

Q. Following morning Holy Saturday what did your sister do? A. She went to the races with Col. Fernando.

Q. You? A. I went to town with Hortense. I stayed the morning and sent her back.

Q. What happened to your sister? A. She had gone to the races with Col. Fernando.

Q. Did you play tennis that afternoon? A. Yes.

40

Q. What time did your sister return? A. I was at the Club about 4 o'clock when they all returned. We were going to the dance and I told her.....

Q. Where did you change to go to the dance? A. We went to Mrs. Jayawickrema's.

Q. You and your sister? A. Yes.

Q. Who left you there? A. Mr. Perumal before the dance.

Q. To go to the dance who picked you up? A. Mr. Perumal.

Q. Did Dr. Samahin also come? A. Yes.

10 Q. The four of you went to the dance? A. Yes.

Q. What time did you return? A. About 12 o'clock.

Q. The dance was in the Bandarawela hotel? A. Yes.

Q. How did you come back? A. We dropped Dr. Samahin. Mr. Perumal dropped sister and me and we spent the night at the Jayawickrema's.

Q. Following day Easter Monday what did you do? A. We went to the church in the morning. Mrs. Jayawickrema gave us the car. We went to bring Hortense down as she was spending the day there. We went to church walking. She gave the car to bring the baby from Solo-
20 mons' boarding house.

Q. Where did you have lunch? A. Mrs. Jayawickrema's.

Q. Who is we? A. Dr. Samahin, my sister and I.

Q. In the afternoon? A. We played cards and passed the time.

Q. After the game did you come down to the Club? A. We sent baby back in Mrs. Jayawickrema's car.

Q. The ayah with her? A. Yes.

Q. The woman Joslin? A. I think so.

Then we went back to the Club. Then it was time for Dr. Samahin to catch the train.

30 Q. Dr. Samahin left that evening by train? A. Yes.

Q. You got back to Mrs. Solomons'? A. Yes.

Q. How did you go back to Mrs. Solomons'? A. In Col. Fernando's car.

Q. You remember your sister coming down to Colombo for Stannie's birthday? A. Yes.

Q. When did she return? A. She returned on the 18th night.

Q. With whom did she come? A. She came with Dr. Samahin, Mr. Namasivayam and Miss Ludowyke.

Q. What time did she come? A. Between 7-30 and 8 p.m.

40 Q. Did they all come up to the house? A. No. I saw the lights of the car flashing. My sister shouted to me. I went with the boy with a lamp.

No. 86
Plaintiff's
Further
Evidence
Merita de
Costa
examination
—continued.

(To Court :

Q. She did not send you any telegram before coming up? A. No.

Q. Were you surprised? A. Yes, because she asked me to come to the station the next morning.

They walked up with me to the bungalow. She came to tell me not to meet her at the station the next morning. Then Miss Ludowyke told me she was going to stay at Mrs. Jayawickrema's. Then I told her look here you are seeing me after a long time. I said we are seeing each other after a long time. Why not stay here with me.

Q. Did you persuade her to stay? A. Yes. 10

Q. What did your sister do? A. Plaintiff went back.

Q. Where? A. In the car.

Q. Did your sister take a bag away from the house? A. No.

Q. After she went up did she send anything? A. She sent Miss Ludowyke's bag and a small parcel.

Q. Following morning did you meet your sister? A. Yes.

Q. Where? A. She came there.

Q. With whom did she come? A. Alone.

Q. What time did you leave that morning? Where did you lunch that day? 20

(To Court :

Q. On 19th morning you and Miss Ludowyke spent the night at Mrs. Solomons'? A. Yes.

Q. What time did your sister come? A. I can't remember.

Q. What luggage did she bring? A. One big suitcase.

Q. Not a small box? A. No.)

I think we lunched at the Jayawickrema's.

Q. Why, do you not know that? A. I can't remember.

Shown P41. Is that a snap taken by you? A. Yes.

Q. What is your camera? A. Kodak. 30

Q. Where? A. At Mrs. Jayawickrema's.

Q. After lunch what did you do? A. We left for Nuwara Eliya.

Q. And got to Nuwara Eliya about what time? A. 5-45 p.m.

Shown P46. Was this also taken by you? A. Yes.

Q. When was that taken? A. Same day I think.

Q. Have you got the negative of that? A. I do not know.

Q. Tell us what you did at Nuwara Eliya? Did you go to the pictures? A. Yes.

Q. And later you went to the dance? A. Yes.

Q. Whose room did you use? A. My brother's. 40

- Q. What time did you return from the dance? A. 4 or 4-30 a.m.
- Q. How did you spend your time? A. We were just sitting on bed talking and laughing.
- Q. Where were you seated? A. On the bed.
- Q. Who were in that room? A. My sister, Miss Ludowyke, Dr. Samahin, Mr. Namasivayam and myself.
- Q. What time did you leave? A. Early morning.
- Q. What time? A. It was early morning.
- Q. Had the sun risen? A. 7 or 7-30.
- 10 Q. Before breakfast? Did you have any breakfast? A. I do not think I had.
- Q. You came to Bandarawela? A. Yes.
- (To Court :
- Q. Is it not usual in these cold climates not to go out on an empty stomach? A. We might have had a cup of coffee.)
- Q. You lunched at Bandarawela? A. Yes, at Outschoorn's.
- Q. Did Mr. Namasivayam lunch with you? A. He had a lunch appointment at
- Q. In the afternoon you left Bandarawela? A. Yes.
- 20 Q. You reached Colombo that night? A. Yes.
- Q. Miss Ludowyke came back with you? A. Yes.
- Q. In the car? A. Yes.
- Q. In Namasivayam's car? A. Yes.
- Q. You got down at Merlton? A. Yes.
- Q. What did Miss Ludowyke do? A. She got down with me.
- Q. When did she go home? A. 2 weeks later.
- Q. Your birthday falls on the 28th April? A. Yes.
- Q. I understand your birthday was celebrated on a grand scale?
A. Yes.
- 30 Q. The Namasivayams were there? A. Yes.
- Q. Tell us what happened on that day? A. There was a little accident.
- Q. What happened? A. Mr. Namasivayam insulted my sister.
- Q. What did he say? A. I was not very near to hear all the conversation but he insulted her.
- Q. Tell us some of the things? A. She used bad language.
- Q. After that did the Namasivayams call at Merlton? A. No.
- Q. Did you and your sister call on the Namasivayams? A. No.
- Q. You did not visit them either? A. No.
- 40 Q. Did the Namasivayams give you a birthday present? A. Yes.

No. 36
Plaintiff's
Further
Evidence
Merita de
Costa
examination
—continued.

Q. After you returned from Bandarawela did Dr. Samahin visit Merlton? A. Yes.

Q. As usual? A. Yes.

Q. You were there from the 20th April till what date did you remain in Merlton till 26th August? A. Yes.

Q. When you left for Kandana? A. Yes.

Q. During that period from the 20th April to 26th August you were there did Dr. Samahin stay there any time? A. No.

Q. Any day? A. No.

Q. Never spent the night? A. No. 10

Q. Did he use the guest room in the afternoons? A. No.

Q. At any time did you observe any kind of familiarity between your sister and Dr. Samahin? A. No.

(To Court :

Q. At any time have you seen any impropriety? A. No.)

Q. You know the cook woman Alice? A. Yes.

Q. She has said that your sister used to prepare egg flips and gave Dr. Samahin in the morning? A. She used to prepare egg flips and I think it was for her husband.

Q. After the husband left for Jaffna were egg flips prepared? A. 20
No.

A. Do you take egg flips? A. No. I do not take egg flips but I take two eggs in the morning raw.

Q. How did you spend your afternoon when you were at Merlton? What time did you lunch? A. About 1 or 1-30.

Q. During this period when Stannie was away did Dr. Samahin come for lunch? A. No.

Q. Did he stay for dinner? A. No.

Q. Tell us how you spent the afternoons ordinarily? A. I wrote letters if I had any, or a little sewing if I had any. I do something in the 30
afternoons.

Q. Is it correct to say that when Dr. Samahin came to Merlton in the afternoons that you sometimes went to bed in the afternoons? A. No.

Q. Do you regularly sleep in the afternoons? A. If I am very tired but I do not make a habit of it as I can never sleep in the night if I slept in the afternoon.

Q. Is it correct to say that you told the servants " my sister is going on like this how can I get married? " A. No.

Q. Did you ever say that? A. Never.

Q. That is wholly false? A. Yes. 40

Q. Did the servants ever complain to you about any impropriety between Dr. Samahin and your sister? A. No.

Q. In July your sister fell ill? A. Yes.

Q. Can you tell us how you became aware of the illness? A. One afternoon after lunch she retired and I was writing a letter when she shouted out to me. When I went to her she seemed to be in great pain. She asked me to get a doctor and I very promptly telephoned for Dr. Frank Gunasekera. He said he would be there as soon as possible. I also telephoned Dr. Samahin.

No. 36
Plaintiff's
Further
Evidence
Merita de
Costa
examination
—continued.

Q. Why? A. Because he was a good friend of the family and I knew him so I telephoned him.

10 (To Court :

Q. Is your telephone an automatic telephone? A. Yes.

Q. What number did you ring him up? A. To the Orient Club.

Q. The register will show that you rang up the Orient Club? A. Yes.)

Q. Who came in first? A. I was in sister's room and I went out and I saw Dr. Samahin's car coming. A couple of seconds later I heard another car coming and ran out and saw Dr. Frank Gunasekera's car.

Q. You brought Dr. Gunasekera also in? A. Yes.

Q. Did you remain in the room? A. No.

20 Q. How did Dr. Samahin go to the lady's room? A. I took him in.)

Q. Did you remain in the room? A. No.

Q. Why? A. They were going to examine my sister so I left. They were both doctors.

Q. Was your sister relieved of the pain? A. She was having a bad pain.

Q. When was she relieved of the pain? A. After the stones went.

Q. When did she pass the stones? A. I have no recollection.

30 Q. She passed the stones on the following day? A. Yes.

Q. How often did Dr. Frank Gunasekera come? A. He came on three consecutive days.

Q. How long was your sister in bed? A. About 2 weeks.

Q. While she was ill did anything happen to your knowledge? A. About the 3rd or 4th day she got unwell.

(To Court :

Q. What do you mean by unwell? A. She got her periods.)

Q. How did you know that? A. I was there. She called out to me. I know it because I saw it.

40 Q. Did you assist her? A. Yes.

Q. In changing the linen? A. Yes.

No. 36
Plaintiff's
Further
Evidence
Merita de
Costa
examination
—continued.

- Q. You remember Stannie coming from Jaffna for the August races?
A. Yes.
- Q. That was on Cup day? A. Yes.
- Q. He went back on Sunday? A. Sunday evening.
- Q. After that he returned for good when? A. Just before I left.
- Q. You left on the 26th August? A. Yes.
- Q. Why? A. Daddy had wanted to take me earlier in the year but as Stannie was going away he asked me to stay with my sister. I left because 1st defendant had returned and I went to Kandana with auntie.
- Q. Why did you go to Kandana? A. Daddy was alone so I 10 went.
- Q. Did you visit Merlton after you left for Kandana? A. Yes.
- Q. Particularly on Saturdays? A. Yes.
- Q. With your father and attend the races? A. Yes.
- Q. You are a regular race goer? A. Yes.
- Q. After that you remember in December there was the Police dance?
A. Yes.
- Q. Have you attended the Police dance before? A. Yes.
- Q. That year had arrangements been made to go to the Police dance?
A. I had made arrangements to go to the Police dance but unfortunately 20 I am subject to Malaria and I got ill and could not attend the dance.
- Q. Later there was the Medical dance? A. Yes.
- Q. You had made arrangements to go? A. Yes.
- Q. With whom? A. With my sister and Stannie.
- Q. To go to the Medical dance you came to Colombo? A. On the 19th noon.
- Q. After you arrived in Colombo what did you do? Did you ring up Stannie?
A. I told him I had arrived.
- Q. Where did you ring him up? A. To the Law Library.
- Q. From where did you ring up? A. Merlton. 30
- Q. What did you say? A. I told Stannie here I am, I hope you are going to the dance. Then, he said Kodi I am unable to go because I am having a big brief. I was very sorry that he was not going to the dance.
- Q. Stannie always addresses you as Kodi? A. Yes.
- Q. After he informed you that he was not going as he got a big brief did you mention this fact to your sister? A. I told my sister that he was not going and asked her to speak to him and do something.
- Q. Did she succeed in persuading Stannie? A. I am afraid no.
- Q. He returned in the evening? A. Yes.

(To Court :

I tried to coax him. I told him to hold the line and got my sister to speak to him. My sister also spoke.) 40

Q. There was one short in the party? A. My brother came in the evening to take Hortense to the Christmas Tree party. We asked him to join us.

Q. Your brother joined you? A. Yes.

Q. He dined there at Merlton that night? A. Yes.

Q. With whom? A. My brother came in, Dr. Samahin was there and the Ludowykes.

Q. The Ludowykes did they dine? A. No.

Q. What was your brother-in-law's costume? A. A sarong and
10 banian.

Q. Is that his usual costume at dinner? A. Yes.

Q. You were all dressed in your best dresses? A. Yes.

Q. Your party left leaving Stannie at home? A. Yes.

Q. What time did you return from the dance? A. We returned about 4 o'clock I think.

Q. In whose car? A. Dr. Samahin's car.

Q. Where did you get down? A. At the gate.

Q. You came up to the bungalow? A. Yes.

Q. What did you find? A. I was surprised to see the front door
20 open. A woman came crying out.

Q. Which woman? A. Alice. She fell down on sister and started crying. I went to switch off the light to give Dr. Samahin the signal that we had arrived. When we went into the rooms we found them stripped of their furniture. My sister became hysterical.

Q. You telephoned your brother? A. Yes, he said he would be there immediately.

Q. He came? A. Yes.

Q. After that the three of you left for Kandana? A. Yes.

Q. You told your father? A. Yes.

30 Q. Following morning you came back to Merlton? A. Yes.

Q. Do you say that during the period you were at Merlton and at Bandarawela you never saw anything improper between your sister and Dr. Samahin? A. Yes.

Q. Your sister's conduct has always been perfectly proper as a married woman? A. Yes.

XXD. by MR. OBEYESEKERA : Nil.

XXD. by MR. E. G. WICKREMANAYAKE :

Q. You realise Miss de Costa that you are still unmarried? A.
Yes.

40 Q. If it is found that your sister has committed adultery in the manner alleged it will affect your future? A. I do not remember seeing anything like that.

No. 86
Plaintiff's
Further
Evidence
Merita de
Costa
examination
—continued.

No. 36
Plaintiff's
Further
Evidence
Merita de
Costa
Cross-
examination

No. 36
Plaintiff's
Further
Evidence
Merita de
Costa
Cross-
examination
—continued.

Q. You realise that? You know the allegations that are made against your sister? A. Yes.

Q. You know it is alleged that she has committed adultery with Dr. Samahin in her own house? A. Yes.

Q. And it is also alleged that all this took place while you were still living in that house? A. Yes.

Q. If those allegations are true it will have an effect on your prospects of marriage? A. I do not know.

Q. Do you realise that it would have been not a proper state of affairs for a young unmarried girl to be aware of these facts and still continue to stay in that house? A. Yes.

Q. Suppose by any mischance the verdict goes against your sister in this case and it is found either by this Court or some higher Court that your sister has committed adultery with Dr. Samahin would that not be a disgrace to the whole of your family? A. Yes.

Q. Would that also affect your chance of getting married? A. It might or it might not.

Q. Quite apart from that finding if it is also found—when people appreciate that you were there in that house and knew about the adultery that was taking place between your sister and another man in her own house that is bound to affect your prospects of marriage you appreciate that? A. How am I to know she was committing adultery.

Q. If your sister is found guilty of adultery in this case the Court will also have to find that you must have known about it? A. How am I to know it.

Q. If any misconduct took place in that house you must have necessarily known about it? A. How am I to know.

Q. Could they have misconducted themselves without your knowledge? A. No. I was always about.

Q. Therefore if the Court finds against your sister it will also involve a finding that you knew about it? A. Yes.

(I point out to Counsel that these are matters of comment really and that they need not be put to the witness.)

Q. You know the allegations that are made against your sister in this case? A. Yes.

Q. The allegations are not merely that she committed adultery but that she committed adultery in her own house with utter disregard to the fact that you were also there? Will you admit to me that if it is found that you were fully aware of what was happening and took no steps to stop it that it will necessarily have an effect on your future? Do you appreciate that? A. I do not quite understand.

Q. You are still unmarried? A. Yes.

Q. If you had seen Dr. Samahin come there and sleeping with your sister in the same room don't you think you should have told your father or brother-in-law? A. I would have if that happened.

Q. If it did take place and you did not take action would that not reflect on you? A. Yes. I would be doing wrong.

Q. Alice has told us that you discussed this with her? A. Yes.

Q. She also told us that you said your chances of marriage would be affected? A. That may still be an untruth; I never said anything like that.

10 Q. You know the woman Alice? A. Yes.

Q. She was a cook? A. Yes.

Q. Where did she sleep? A. In the pantry.

Q. What was kept in the pantry? A. Plates and cutlery and various things like that.

Q. Any food? A. When lunch or dinner is ready it is brought and kept there.

Q. Do you allow a servant to sleep in that? A. I do not know. The woman always slept there.

Q. There was a long table all along one side? A. Yes.

20 Q. There was a cabinet? There was a radiogram cabinet? A. I do not remember a radiogram.

Q. The radio itself had been removed and the cabinet was there? A. No. I do not remember.

Q. How long was that room? A. I can't tell you the dimensions of the room.

Q. Alice slept there? A. Yes.

Q. Right away from the beginning? A. Yes.

Q. Your sister was aware all along? A. Yes.

(Previous evidence put to witness). That is all untrue.

30 Q. You say nothing ever took place in that house? A. No.

Q. What time did Dr. Samahin come there? A. In the morning and evening. If he does not come in the morning he will come in the evening.

Q. What time in the morning? A. 11 o'clock.

Q. How long will he stay? A. An hour and a half.

Q. Where did he stay? A. In the verandah.

Q. In the evening? A. 6 p.m.

Q. Where did he stay in the evening? A. In the verandah.

40 Q. What did he do? A. We were left in his charge by Stannie. We spoke and discussed. The three of us played cards.

Q. What? A. Poker.

No. 36
Plaintiff's
Further
Evidence
Merita de
Costa
Cross-
examination
—continued.

- Q. Did you play for money? A. For counters.
- Q. How many times a week? A. 2 or 3 times a week.
- Q. If he did not come in the morning he came in the evening? A. Yes.
- Q. He did not go to any other part of the house? A. No.
- Q. Did he take your sister out? A. He took my sister and me out.
- Q. How many times a week? A. If there was a thing like the promenade concert he will take us. That is on Sundays.
- Q. Did you say Tuesday? A. No. 10
- Q. Every Sunday? A. Yes.
- Q. Where else? A. If there is a party. He would also take us to the Ludowykes if we wanted to go there.
- Q. You remember Dr. C. O. Perera's had a party? A. I do not remember.
- Q. You remember staying a night at Dr. Marcelline de Costa's with the baby? A. Yes. I stayed with my uncle.
- Q. Did you go and stay a night with Dr. Marcelline de Costa with the baby? A. No.
- Q. When your sister went to a party at Dr. C. O. Perera's? A. 20 No.
- Q. How late was it when you returned from the promenade concerts? A. Sometimes he took us for a feed.
- Q. What time did you go home? A. About 10 o'clock.
- Q. You only went to the promenade concerts—not to the dances? A. No.
- Q. Sure about that? A. Yes.
- Q. And always returned about 10 o'clock? A. Yes.
- Q. You were a very keen dancer? A. Yes.
- Q. You swear that you never went to a G. O. H. dance with 30 Dr. Samahin and your sister while Stannie was in Jaffna? A. As far as I remember.
- Q. Certain you did not go regularly? A. As far as I remember he did not take me at all.
- Q. When you left home I suppose you told the servants you would come at 10 o'clock? A. No. I suppose they go to sleep.
- Q. What time would you normally close up the house? A. Soon after dinner.
- Q. What time would that be? A. If we have no visitors we will have our dinner by about 9 p.m. 40
- Q. What time are the promenade concerts over? A. 8-30.

- Q. From the promenade concerts you return home for dinner?
 A. Yes.
- Q. Feeds were very occasional? A. Yes.
- Q. Once a month? A. I cannot remember.
- Q. From the concerts you come home, have your dinner and the house would be closed by 9-30 p.m.? A. Yes.
- Q. Promenade concerts were once a week? A. Yes.
- Q. How often would you go out for a feed? A. Not every time you went to the promenade concert? A. No.
- 10 Q. How often would you go to feeds after promenade concerts?
 A. I can't really tell you that.
- Q. Try and remember? A. I can't.
- Q. Once in every four or five concerts you go for a feed? A. I can't tell you.
- Q. Once a month? A. Sure we went more than once a month. I remember going for feeds but I can't tell you how many times. It may be about three times a month.
- Q. You are not at all sure? A. I am not sure.
- Q. After the feed what time will you get back? A. 10 o'clock.
- 20 Q. That too would be just about half hour after the normal retiring time?
 A. Yes.
- Q. When you went out the servants would wait a little longer?
 A. I do not know.
- Q. How often did you find the doors were closed? A. If we did not go for a feed the doors would be open otherwise the doors would be shut by about 9 p.m.
- Q. Apart from promenade concerts what were the parties which you attended which made you get home late? Were they frequent? A. Very frequent.
- 80 Q. How many parties did you go to like that? A. Very often. The places we used to go to the Ludowykes.
- Q. You mean going to the Ludowykes is a party? Do you mean by party something more than a visit? If you went and called on a friend of yours would you call it a party? A. A celebration.
- Q. How many such celebrations were there between February and August? A. A good few.
- Q. Roughly 10 or 15 or 20? A. I can't give the number.
- Q. Give me some of the parties? A. Most birthdays in the Ludowyke family.
- 40 Q. They always had a party? A. Yes.
- Q. You know the young lady who gave evidence? A. Yes.
- Q. Whenever she had a birthday she had a party? A. Yes.

No. 36
Plaintiff's
Further
Evidence
Merita de
Costa
Cross-
examination
—continued.

Q. How many Ludowykes are there who had parties? A. There were four girls.

Q. And they celebrated four birthdays? A. I think so.

Q. And they celebrated all between February and August? A. Yes. The eldest girl's birthday was in September or 17th August. The other girl's I think is in June and the other one was in March—19th March.

Q. You gave Teddy a present? A. I think I did so.

Q. Your sister gave her one? A. I do not know about sister.

Q. Any other parties? A. I can't remember.

Q. Those are the three parties you can remember? A. Yes. 10

Q. You told us a good few will you give me some others?

(To Court :

Q. 2nd defendant has 7 children and his wife; did he invite you to any parties? A. No.

Q. He gave no party? A. No.

Q. Can you remember any other parties besides the Ludowykes? A. Mrs. Hilarion de Silva 24th May. That is about all I can remember.)

Q. Mrs. Hilarion de Silva's party who went to that? A. Dr. Sam, sister and I. We returned quite late.

Q. What month was that? A. In May. 20

Q. These four occasions and a few others which you can't remember were the only days you returned home after 10 o'clock except when you went for feeds? A. Yes.

Q. It is not correct that you returned home about once a week after 12 o'clock? A. I really could not tell you.

Q. You are certain you never went to the G. O. H. dances? A. Yes.

Q. When you returned late where would the servants be? A. Sleeping in their respective places.

Q. My sister's ayah Jane would sleep in the corridor and the two men servants I think would sleep in the front verandah. Baby's ayah would sleep with the baby and Alice in the pantry.

Q. Pablis was a servant there at the time? A. Yes.

Q. He used to sleep in the verandah? A. Yes.

Q. When you turned up naturally the servants would get up and sit up and wait till the door was opened? A. Yes.

Q. Did the servants not get up? A. We get down at the gate.

Q. Why did you get down at the gate? A. I do not know.

Q. No particular reason? A. No.

Q. Just to save the trouble of turning down the drive? A. Yes. 40

Q. Sometimes when you returned home it would be a little drizzly? A. When it rains Dr. Samahin will come and drop us at the portico.

Q. If it was drizzling? A. I think I better say I cannot re-
member.

Q. When was Iris Ludowyke's birthday? A. March.

Q. There was a party at the birthday? A. Yes.

Q. Why should Iris Ludowyke say that she never had a birthday party?
A. I do not know.

Q. And that she never received presents? A. I do not know.

(Previous evidence put to witness.)

She must have made a mistake.

10 Q. You say you know of Miss Ludowyke's party more than Miss Ludowyke herself? A. Yes. I went to it.

Q. That was one of the occasions you got home late? A. Yes.

Q. Very late? A. I can't say very late.

Q. Roughly? A. I am afraid I can't tell you.

Q. 10 o'clock? A. I can't tell you.

Q. Might have been 1 o'clock in the morning? A. Might have been.

Q. And the doctor left you at the gate? A. Yes.

Q. What was the difficulty of his entering the gate and dropping you
20 at the portico? A. I do not know.

Q. You can't suggest a reason? A. No.

Q. Pablis told us that Dr. Samahin used to drive in—that is all false?
A. Yes.

Q. That the car used to be kept in the porch or in the garage?
A. If he came in the evening the car would be in the porch.

Q. In the night? A. He used to drop us down at the gate.
(Pablis' evidence put to witness).

That is all false.

Q. The door was opened to you by Jane? A. Yes.

30 Q. Alice was in the pantry you say? A. Yes.

Q. With regard to egg flips you told us that your sister made egg flips for her husband? A. Yes.

Q. When her husband went to Jaffna there would be no need to make egg flips? A. No.

Q. What time do you get up in the morning normally? A. 7-30 or 8 o'clock.

Q. You can't say if she made egg flips before that time? A. No.

Q. Have you seen Dr. Samahin when you got up in the morning?
A. No.

40 Q. You know the guest room? A. Yes.

No. 86
Plaintiff's
Further
Evidence
Merita de
Costa
Cross-
examination
—continued.

Q. It is in evidence that one day when your father turned up Dr. Samahin and your sister were together in the guests room. Pablis says he ran and knocked at the door and told your sister about it and took his time opening the front door, etc. Is it possible to go from the spare room—is it possible to get to her room without being seen by anybody in the corridor? A. A person running along the shoe flower hedge can easily be seen from the corridor.

Q. You say it is not possible for a person to go from the side where the guest room is and get on to the other room which your sister occupied without being seen? A. Can be seen. 10

Q. Utterly impossible to go without being seen? A. No.

Q. Suppose plaintiff wanted to go from the guest room to her room behind the shoe flower hedge without being seen by a person coming in a car from the front? A. If you are up on the verandah you can see. The first thing that strikes your line of vision is that. The only way you have to enter is by the corridor. My sister keeps the hall door closed and the corridor open.

Q. The corridor is never kept closed by day? A. No.

Q. It is not necessary to open the front door for your father to come in? A. No. 20

Q. It is not correct that the person coming in there by day if the front door was closed would have to be standing in the verandah? It is not necessary for a person to stand on the verandah to enter the house? A. No.

Q. After Noel has had his lunch and gone to work and you ladies have retired to your occupations after breakfast are not the front doors of the house closed? A. Not the door on the corridor. That is my recollection.

Q. If the servants say all the doors are closed would you contradict that? A. Yes. 30

Q. The corridor door was always left open? To your knowledge and to your sister's knowledge? A. I suppose she knew about it. To my recollection that door was always open.

(To Court :

Q. Are you not aware of police notices to bungalows to keep the front doors closed? A. No.)

Q. Your father used to drop in there occasionally morning or evening? A. I can't remember.

Q. He seldom dropped in there? A. He used to come.

Q. You can't recollect whether it was in the morning or evening? 40
A. I can't recollect. He used to come and see us.

Q. You recollect any day when he came in the afternoon? A.
No.

Q. You did sewing in your room? A. I used to sit in the back verandah and I can see the front door.

Q. How high is the shoe flower hedge? A. I can't tell you.

Q. Was the hedge taller than you or not? A. I can't say.

Q. You will not contradict your sister when she says it is taller than her? A. No.

Q. Did you spend sometime reading a book in the lawn? A. Yes, when there was nobody and my sister went pottering about the garden I would read the book.

10 Q. You have sworn that your sister has never gone out alone. When you went to the station that day in whose car did you go? A. I went in Dr. Samahin's car.

Q. That was the car that was used on that day? A. Yes.

Stannie's luggage went in Dr. Marcelline's car. We all went in Dr. Samahin's car. The luggage was in the other car.

Q. You say Stannie told Dr. Samahin—what, you remember the exact words? You are swearing to the exact words? You remember the exact words? A. Yes. He said he left his wife and sister-in-law entirely in his charge.

20 Q. What did he mean? A. I do not know.

Q. What did you take it to mean? A. I thought to look after us. He was a friend of the family.

Q. So much so that you yourself have a pet name for him? A. Yes.

Q. What is it? A. Shafa.

Q. That you alone used? A. Yes.

Q. Did he have a name for you? A. No.

Q. All that you understood by it was that he was to look after you? A. Yes.

30 Q. In what sense? A. To give the car whenever we wanted it. I can't put it down in any other way.

Q. Help you to get anything you wanted? A. It did not strike me.

Q. Did it strike you that it was anything abnormal or extraordinary? A. No.

Q. Did you take it to mean that you should give medical assistance? A. No.

Q. You were definite that you never went to a G. O. H. dance? A. As far as my memory takes me.

40 Q. Will you tell me why your sister says she went to the dances every Sunday and whenever she went she returned after midnight? A. I am sure I am making a mistake then. I can't remember so many things.

No. 36
Plaintiff's
Further
Evidence
Merita de
Costa
Cross-
examination
—continued.

Q. You were also very keen on dancing? A. Yes.

Q. You remember that you did go to the dances? A. I remember very often when Stannie was here.

Q. Did you go to any other dances? Other than G. O. H. dances?
A. No.

Q. Those were the only dances you went to? A. Yes.

Q. Except the Medical and Police dances? In Colombo the only dances you attended were the G. O. H. dances Medical dances—any other dance besides those? A. Any other dance I cannot remember.

Q. Those were the dances you can remember to which you went 10 regularly? A. Yes.

Q. After Stannie went away Dr. Samahin used to drop in there until you went off to Bandarawela with your sister? A. Yes.

Q. Your brother Noel stayed there till about the beginning of March? A. Yes.

Q. He left early in March? A. He left in March but I cannot remember the date.

Q. It was certainly before you went to Bandarawela? A. Yes.

Q. It was the first week of March? A. I can't tell you.

Q. You know the woman Joslin? A. Yes. 20

Q. That was the ayah who was with you in Bandarawela? A. Yes.

Q. She was there shortly before you went to Bandarawela? A. Yes.

Q. She was throughout the entire period you and your sister were in Bandarawela—she came back on the 19th by train? A. Yes.

Q. Alice was there throughout the entire period? A. Yes.

Q. At Bandarawela you met Dr. Samahin? A. Yes.

Q. On Good Friday morning at the club? A. Yes.

Q. That was the first instance? A. Yes. 30

Q. You were able to tell the Court it was 10-30? A. I used to go to the post office by 9-30 to take my letters. From there I go to the club.

Q. How far is the post office from the club? A. I can't tell you.

Q. It is 2 minutes walk? A. I can't tell you.

Q. Half an hour's walk? A. Never noticed it.

Q. Two miles? A. I do not know.

Q. How many times have you been from the post office to the club?
A. A good number of times. I did not notice the distance between the post office and the club. 40

Q. It made no impression on your mind? A. No.

- Q. At 9-30 you went to the club? A. Yes.
- Q. That is why you fix the time at 10-30? A. Yes.
- Q. You remember the time 10-30? A. Yes.
- Q. You can't remember the distance but you can say you met Dr. Samahin at 10-30 a.m.? A. Yes.
- Q. You know what evidence your sister has given? A. No.
- Q. Never asked her? A. No.
- Q. Never discussed with her? A. No.
- Q. Your sister was in the box for several days? A. Yes.
- 10 Q. You never asked her what happened on this date? A. No.
- Q. She never discussed? A. No.
- Q. Not one word in the house? A. No.
- Q. Up to date till you came into the witness box you did not know there was evidence given fixing the time about 10-30? A. No.
- Q. You definitely remember the time? A. Yes.
- Q. From the club where did you go? A. Close on lunch time we went to the bazaar.
- Q. Will you tell us what time you left the club? A. Lunch time can be 1 or 2.
- 20 Q. You went on to the market? A. I met Stannie there. My sister had to send a basket of vegetables to Colombo.
- Q. How did you go to the market? A. Went in Perumal's car.
- Q. At the market you met Stannie? Not at Millers'? A. Yes.
- Q. You are definite about that? A. Yes.
- Q. Certain? A. Yes.
- Q. With Mr. Weerasinghe? A. Yes.
- Q. What were they doing? A. They were examining cabbages.
- Q. Where is the vegetable market from Millers'? A. If the vegetable market is here Millers will be here.
- 30 Q. Millers is opposite the post office? A. Yes.
- Q. The vegetable market is where? A. Same line as the post office.
- Q. What is the distance? A. You can walk across.
- Q. How long will it take? A. A couple of seconds.
- Q. Next to the post office is a row of boutiques? A. Yes. On the pavement there are vegetables.
- Q. That is what you call the vegetable market? A. Yes.
- Q. You admit that straight from the post office right down to the junction is a row of boutiques? A. Yes.
- 40 Q. And at the junction is a 'bus stand? A. Yes.

No. 36
Plaintiff's
Further
Evidence
Merita de
Costa
Cross-
examination
—continued.

Q. Were these vegetables exposed on Millers' pavement? A. Not on Millers' pavement, but very near.

Q. Stannie was there with Mr. Weerasinghe? A. Yes.

Q. You were very surprised to see him? A. Yes.

Q. Dr. Samahin made no mention of the fact that he was coming up? A. No.

Q. If he had made mention of the fact you would have remembered? A. Yes.

Q. You were surprised? A. Yes.

Q. You had no recollection of Dr. Samahin mentioning anything about it? A. No.

Q. Your sister spoke to Stannie? A. Yes.

Q. Did you hear Dr. Samahin invite Stannie? A. Yes.

Q. Stannie said he was not properly clad and that he was going to Welimada.

Q. Your sister did not invite him? A. I did not hear her.

Q. Do you know where Welimada is? A. No.

Q. Did you know Stannie had come from Ratnapura? A. No.

Q. You saw him with Mr. Weerasinghe? A. Yes.

Q. You do not know from which side he had come? A. No. 20

Q. You were there of course when they were generally chatting? A. He spoke to sister and we all talked together.

Q. Up to date you do not know he had spent the time with the Krishnaratnes? A. No.

Q. You met the Krishnaratnes after that? A. No.

Q. Until you came to the box you did not know that he had stayed with the Krishnaratnes? A. No.

Q. Stannie had no reason to tell any lies as to where he was lunching? A. No.

Q. Are you aware that he was lunching at Belihul oya Resthouse? A. I heard he was going to Welimada. 30

Q. Do you know where Welimada is? A. Is it not on the way to Nuwara Eliya?

Q. Do you know where Belihul oya Resthouse is? A. Yes, we lunched there.

Q. You stopped also on the way to Bandarawela? A. Yes.

Q. Did you stop at Ratnapura? A. No.

Q. Were the Krishnaratnes there? A. No.

Q. You do not know even now that Belihul oya is on the road between Bandarawela and Ratnapura? A. We stopped on the way to Ban- 40 darawela.

Q. You know the Belihul oya Resthouse is on the road from Ratnapura to Bandarawela? A. I do not know.

Q. Stannie went off with Mr. Weerasinghe and you and Perumal and your sister and Dr. Samahin went to Solomons' ? A. Yes.

Q. Did you go anywhere else first? A. We went to the railway station.

Q. This was near lunch time? A. Yes.

Q. Dr. Samahin was staying at Outschoorn's and was going out of his way? A. Yes.

10 Q. That is a good bit out of town? A. Yes.

Q. Mr. Perumal was going off to Haputale? A. Yes.

Q. He was taking you on his way to Haputale? A. Yes.

Q. Where was Dr. Samahin going to lunch? A. I do not know.

Q. Your sister asked him for lunch? A. No.

Q. You did not hear? A. No.

Q. You were altogether throughout? A. Yes.

Q. Your sister did not ask the doctor to lunch at all to your knowledge? A. No.

Q. Dr. Samahin got down there? A. Yes.

20 Q. Then it was quite lunch time? A. Yes.

Q. You did not have any idea where he was going to lunch? A. No.

Q. What happened then? A. He dropped us in the bungalow and said he was going. He had no car.

Q. Mr. Perumal's car had gone off? A. Yes.

Q. He was walking it out? A. Yes.

Q. Then Mrs. Solomons came out? A. Yes.

Q. She said why not have some lunch? A. Yes.

Q. You heard Mrs. Solomons offer the lunch? A. Yes.

80 Q. Can you say any reason why did Dr. Samahin say he was invited by the plaintiff? A. I can't.

Q. That must be a mistake? A. Yes.

(Previous evidence put to witness). Suppose Mrs. Solomons had not invited 2nd defendant what would have happened to him? A. One of us would have asked him.

Q. How far is it from Solomons to Outschoorn's? A. 1½ miles.

Q. You had a late lunch that day? A. It was.

Q. The next you went with Dr. Samahin to the Muttetugama's?
A. Yes.

40 Q. And after that you went to Diyatalawa? A. Yes.

No. 36
Plaintiff's
Further
Evidence
Merita de
Costa
Cross-
examination
—continued.

Q. What time did you return from Diyatalawa? A. Late. I will not give a time.

Q. After midnight? A. I can't tell you.

Q. What time was it? A. I came back and had dinner.

Q. How late? A. I can't tell you.

Q. 9 or 10 o'clock? A. Say about 11 o'clock.

Q. The next day your sister went to Nuwara Eliya for the races and that night was the night of the dance? A. Yes.

(Luncheon interval.)

Signed. R. F. DIAS, 10
D. J.

Q. You say you went with your sister to the dance on Saturday?
A. Yes.

Q. That is the 12th? A. Yes.

Q. And you say you spent the night at Mr. Jayawickrema's?
A. Yes.

Q. Tell us what happened on Sunday? A. We went to the Church in the morning and asked Mrs. Jayawickreme for the car to go to bring Hortense and then went to the Club and went to Mrs. Jayawickreme's and we had lunch there.

Q. Who had lunch? A. Dr. Samahin, my sister, myself and 20 the baby.

Q. You are perfectly sure? A. Yes.

Q. Was Dr. Samahin introduced to Mrs. Jayawickreme? A. I do not know.

Q. After lunch you and Dr. Samahin and Mrs. Jayawickreme played cards? A. Yes.

Q. And Dr. Samahin spent the whole afternoon there? A. Yes.

Q. You had been staying at Mrs. Jayawickreme's before? A. No. That was the first time.

Q. And you occupied the room on the left hand side as you come in?
A. Yes.

(Shown sketch). Room F was the room I occupied.

Q. Next to that room is a smaller room? A. Yes.

Q. And while you and your sister were there you used the bathroom on that side? A. Yes.

Q. And next to the room you slept in was the dressing room with the wash hand stand and things like that? A. I have no recollection of that.

Q. The bathroom you used you had to enter from the small room?
A. Yes.

(Mrs. Jayewickreme's evidence put to witness).

She was referring there to Dr. Samahin's stay there on the 18th night ?
 A. Mrs. Jayawickreme is making a mistake. I remember I went there for lunch and I and my sister and Dr. Samahin spent the afternoon playing cards.

(Mrs. Jayawickreme's evidence read). How do you reconcile that evidence with your evidence ? A. I know definitely that we went to Mrs. Jayewickreme's. Mrs. Jayewickreme is making a mistake.

Q. Your position is that throughout Dr. Samahin's stay at Bandarawela you were with your sister always ? A. Yes.

10 Q. Dr. Samahin was never in your sister's company alone ? A. No.

Q. You swear that the Sunday was spent in that manner ? A. Yes.

Q. While you were at Bandarawela had you occasion to go by yourself to see your friends ? A. Yes I have gone about.

Q. And you have not always been with your sister ? A. I always go with her to town and then walk up.

Q. You go your way and she goes hers ? A. Yes.

Q. The only place I went out alone to was the Outschoorn's.

Q. You went very frequently ? A. Yes.

Q. You know Mrs. Outschoorn very well ? A. Yes.

20 Q. Where did you meet again ? A. Just at that junction.

Q. You arrange to meet at the junction ? A. At the junction where the road branches off to go to the park.

Q. Have you been to the Outschoorn's at night ? A. No.

Q. Do you know Babapulle who has given evidence in this case ?
 A. I do not know him.

Q. Do you know that he has given evidence in this case ? A. No.

Q. Has no one told you that ? A. No this is the first time I hear of it.

Q. You do not know what evidence he gave ? A. No.

30 (Dr. Babapulle's evidence put to witness.)

I have not been to the Outschoorn's house by night.

Q. Shortly after that was Stannie's birthday ? A. Yes.

Q. And was any arrangements made for your sister to come down to Colombo for the birthday when Dr. Samahin was there ? A. Some arrangements were made on Good Friday afternoon. On the 11th.

Q. You were by your sister and husband at the time ? A. Yes.
 She said if I get the chance I will come down for your birthday.

Q. In 1939 were you in Ceylon for Stannie's birthday ? A. Yes.

Q. Your sister went down for the birthday on the 16th ? A. Yes.

40 Q. She got a telegram that day ? A. Yes.

No. 86
Plaintiff's
Further
Evidence
Merita de
Costa
Cross-
examination
—continued.

Q. Do you know she had sent a telegram first saying that she was coming down? A. I have no recollection of that.

Q. That telegram which she received said that she should not come?
A. Yes.

Q. Because the whole party were coming to Colombo in a few days time?
A. Yes. We were due to leave on the 20th.

Q. The telegram suggested that she was wasting money? A. Yes.

Q. In spite of that your sister came down? A. Yes.

Q. The baby was also taken down? A. Yes.

Q. And you and the ayah were left behind? A. Yes. 10

Q. Why did you not come too? A. I was playing in a hockey match in Diyatalawa on the 17th.

Q. Did your sister know that? A. Yes.

Q. It is not owing to the want of funds that you did not come?
A. I do not know.

Q. Had you any money of your own? A. Yes, just about Rs. 10 I think.

Q. Did your sister discuss with you the question of the whole lot going?
A. No.

Q. When she received the telegram did she not say let us go down?
A. No.

(To Court :

Q. Did she not say, let us go once and for all? A. She said that we should all go.

Q. Then you said you were playing at the hockey match. A. Yes.

Q. She said if you have to play in the match stay behind? A. She did not say that she did not have enough cash for the whole lot to go.)

Q. The telegram was received at Mrs. Solomons' house? A. Yes.

Q. You generally go to the club in the evenings? A. Yes, early in the evening. 30

Q. And that day also your sister went to the station and you went to the club? A. Yes. I walked down to the club from Mrs. Solomons. On the 16th I do not think I went to the club. I am not quite sure.

Q. You can recollect your sister going to the station? A. Yes. I did not go with her to the station. I did not go and see her off.

(To Court :

Q. There was the baby also, did you not go? A. No, because I would have had to go back alone.)

Q. When you go to the club at what time do you return? A. Before dark. 40

Q. You read the telegram yourself? A. Yes, I saw it.

Q. When your sister went away when did she say she was coming back? A. On the 19th.

Q. You were all travelling down on the 19th by train? A. Daddy said he was sending the car that was expected on the 20th. The car did not turn up.

Q. On the 18th night she turned up again? A. Yes.

Q. Unexpectedly? A. Yes.

Q. She turned up at the Solomons' and asked you not to come and meet her at the station? A. Yes.

10 Q. Do you know that she had sent a wire to Jayawickreme's? A. No.

Q. Up to date you are not aware of that? A. No.

Q. No telegram was sent to you? A. No.

Q. Where did she stop the car? A. Down the other side. There is a bank on the other side where there are steps going up to the bungalow, the car came to the other side of the bungalow.

Q. You had to go across a bridge and up the steps? A. Yes. I saw the lights of the car.

20 Q. She shouted out to you? A. Yes. I heard her shout and went down. I recognised the shout.

Q. She had come to tell you that she had come and to ask you not to meet her at the station? A. Yes.

Q. That was fairly late? A. About 8. I went down to meet her with the boy and a lamp. Then she walked up with me.

Q. Miss Ludowyke was in the car? A. Yes.

Q. Did you speak to her? A. No. They met me half way.

Q. And you were surprised to see your old school friend Miss Ludowyke? A. Yes.

Q. The last person you expected to meet? A. Yes.

30 Q. Who was it who told you that Miss Ludowyke and your sister were spending the night out? A. Miss Ludowyke. She told me that she was going to stay at Jayewickreme's with my sister and I asked her to stay with me.

Q. You had a big room at the Solomons'? A. Yes.

Q. There were two beds there placed side by side? A. Yes, together.

Q. The ayah slept in the next room? A. Yes.

Q. Prior to that date you and your sister and baby all three slept on that bed? A. Yes.

40 Q. The two beds were side by side and you and your sister one on each side? A. The two beds were put together and up against a wall and the baby slept on that side. My sister occupied the middle,

No. 36
Plaintiff's
Further
Evidence
Merita de
Costa
Cross-
examination
—continued.

Q. The baby did not take up much room? A. No.

Q. Did the baby struggle that night? A. I do not know.

Q. How many blankets did you use? A. We had two blankets and the baby her own blanket. There were three blankets.

Q. Did you sleep well under those conditions? A. It was very uncomfortable.

Q. You were living like that from the 22nd of March up to the 16th April? A. Yes.

Q. As a matter of fact you originally were to get some other rooms at the Solomons? A. They were all full up. 10

Q. On that day that your sister and Miss Ludowyke returned from Colombo the baby was not there? A. No.

(To Court :

Q. The baby was about three years old then. What do you mean by saying the baby did not take up much room? A. She was sleeping against the wall.

Q. You had to give sufficient room so that the mother would not squash the child? A. Not necessarily, she was sleeping quite close.

Q. Supposing she rolled over the baby? A. I do not think so because when we were at Jayewickreme's I slept on the same bed with her 20 and I did most of the rolling and she did not.

Q. Was there a mattress or pillow kept between the baby and the mother? A. No.)

Q. Your sister was sleeping in the middle that is between the two beds? A. Yes.

Q. And from 22-3 to 16-4 she slept like that? A. Yes.

Q. Is Miss Ludowyke very bulky? A. No.

Q. Did she want more space than the baby? A. She rolls about a good deal.

Q. How do you know that? A. I noticed it. 30

Q. When? A. When we were both sleeping together.

Q. When she came there you did not know? A. I think I did because she came home twice. She slept once or twice at Merlton.

Q. When did she stay at Merlton? A. I remember she stayed a week and, I think soon after I returned from hospital in February.

Q. Are you suggesting that she slept in the same bed with you at that time? A. Yes.

Q. Although you had just returned from hospital? A. Yes.

Q. There were several beds in the house then? A. Yes.

Q. In the room where your sister slept there were two beds? A. 40
Yes.

Q. She slept the night on your return from hospital with you in the same bed? A. Yes.

Q. Miss Ludowyke has told us she never slept a night out of the house until she went to Bandarawela? A. She must be making a mistake.

Q. Miss Ludowyke when she returned from Bandarawela with you and your sister on the 20th you were dropped at home by Dr. Samahin? A. Yes.

Q. And Miss Ludowyke stayed with you for two weeks? A. Yes.

Q. And shared the same bed with you? A. Yes.

10 Q. And Miss Ludowyke has told us that she stayed at Merlton but she occupied the bed which was Mr. Alles' bed? A. I do not know that, I am right.

Q. Where was your bed? A. In the next room.

Q. Can you tell me why if there were so many beds the two of you slept in one bed? A. We were very great friends.

Q. And you say she slept with you in a single bed rather than sleep in another bed? A. Yes.

Q. These are twin beds? A. Yes.

20 Q. For two weeks you and Miss Ludowyke shared a bed? A. Yes.

(To Court :

Q. Was Miss Ludowyke at school with you? A. Yes, at St. Bridgets.

Q. Did you sleep in the same bed there? A. No, but close to each other in the dormitory. I left St. Bridgets when I was about 11 years old.)

Q. And after that you did not meet Miss Ludowyke till you returned from Kodikanal? A. Yes.

Q. Till you went with this party to the G. O. H. dances? A. Yes.

80 Q. It is only when you went with your sister and Dr. Samahin and brother-in-law that you met her again after you parted at school? A. Yes.

Q. On that day when you asked Miss Ludowyke to stay with you you thought the three of you would occupy those two beds again? A. Yes.

Q. You thought it was quite possible for the three of you to occupy those two beds? A. Yes.

Q. What did Miss Ludowyke say? A. I love to stay with you.

Q. And you persuaded her to stay? A. Yes.

40 Q. And you expected that all three of you would occupy that room? A. Yes.

Q. What did your sister say then? A. I do not know what she said.

No. 86
Plaintiff's
Further
Evidence
Merita de
Costa
Cross-
examination
—continued.

Q. When Miss Ludowyke decided to stay you found your sister was going alone? A. Yes.

Q. Did you not ask where are you going? A. No.

Q. You were not surprised when she did not turn up that night? A. No.

Q. Did you not ask her when she was going, where are you going? A. No.

Q. Why should you alter your domestic arrangements because of this Burgher lady who had suddenly come? A. Because we were great friends and I had seen her after a long time and I had so many things to tell her.

Q. Why did the plaintiff leave, can you give no reason? A. No.

Q. When your sister was going away did you ask her, where are you going? A. I thought she was going to Jayewickreme's because Miss Ludowyke said she was staying behind.

Q. And you expected your sister to go and stay with Mrs. Jayewickreme alone? A. Yes.

Q. Did you not ask her what is the idea of going to Mrs. Jayewickreme's at this time of the night? A. No.

Q. When she was going down the steps did you know that she was going to Jayewickreme's? A. Yes. I thought so.

Q. When you spoke to her and she agreed to Miss Ludowyke staying the next thing she did was to run down to the car? A. No. She called to the servant boy to fetch the luggage.

Q. Up to that time you had not asked your sister to stay? A. No. I knew my sister was going to the Jayewickreme's although she did not say so.

Q. When you put it to Miss Ludowyke to stay and she agreed had you to use much persuasion? A. Yes, I had.

Q. You decided it and she stayed? A. Yes. 30

Q. Did you tell your sister then look here Miss Ludowyke is going to stay here? A. Yes.

Q. Miss Ludowyke in your hearing did not have any discussion with your sister about it? A. No.

Q. She did not ask your sister's permission? A. No. Not in my hearing.

Q. And at the time your sister went down to the car she went with the boy to bring up the luggage? A. Yes.

Q. At that time she had gone down with the boy to show the boy the luggage? A. She was going to send the luggage. 40

Q. Did she tell you that? A. I thought she was going to Jayewickreme's.

Q. Did she say I am going to send the luggage? A. She said I am going to send Teddy's luggage.

Q. Did you not say what about yourself? A. No.

Q. Who were the other occupants in the car? A. I did not see because I did not go right up to the car. I met them half way.

Q. Did you know who they were? A. Yes.

Q. Joslin was the ayah there that night? A. Yes.

(Joslin's evidence put to witness.)

Q. It is not true that the 2nd defendant also came to the bungalow and that one box was brought into the room and opened? A. I do not think it was opened.

Q. When a paper parcel was taken out of the box? A. I think it came separately.

Q. And that your sister left that box behind that was brought took a small attache case and went away? A. No, she did not take an attache case and go away.

(To Court :

Q. That ayah is all wrong? A. Yes.

Q. No such thing happened? A. No.)

Q. When your sister went off, you knew that she was going with two gentlemen only? A. Yes.

Q. You did not have any idea where the gentlemen were going to stay? A. No.

Q. You did not give a thought then—that she was going to spend the night at Jayewickreme's? A. I knew she was going there.

Q. The next day when she came back did you know she had been to Jayewickreme's? A. Yes. I asked her and she said she was at the Jayewickreme's.

Q. Did you ask where the 2nd defendant stayed? A. Yes.

Q. And she told you? A. Yes. She said that he also stayed at the Jayewickreme's.

Q. You had been to Jayewickreme's before? A. Yes.

Q. Your sister and you occupied one room that room which you pointed out? A. Yes.

Q. Those two were the only rooms available? A. Yes.

Q. Did you ask the plaintiff where did the doctor sleep? A. No.

Q. You thought nothing of it? A. No.

Q. Did you not tell her there is very little room at the Jayewickreme's? A. No, I did not bother.

Q. You knew that to go to the bath room you had to go through the small room? A. Yes.

No. 36
Plaintiff's
Further
Evidence
Merita de
Costa
Cross-
examination
—continued.

Q. When she came the next day she came alone, packed up her things? A. Yes.

Q. You went to Nuwara Eliya that day and got there at what time? A. 5-45.

Q. When we went there we met my brother and my sister said we will use his room and we washed and tidied ourselves and went off to the pictures.

Q. Is there a wash hand stand in that room? A. We went to the bath room.

Q. What about the men? A. I do not know. 10

Q. Where did Miss Ludowyke change her frock? A. In the bath room.

Q. Why? A. Because of the request by Mr. Namasivayam that he would like to have his things there.

Q. When you went in there your brother said you can have the room to wash and tidy yourselves? A. Yes.

Q. And there was no question of your having that room that night? A. No.

Q. Five of you went to that room to wash and tidy up? A. No, three of us. I do not know where the men went. When we were going 20 out my sister said we should like to have that room and my brother said he was sharing the room with another friend and he would speak to him and let us know tonight if we could have that room.

Q. He said he was sharing it with Mr. Welsh? A. Yes and he said he would speak to Welsh and let us know later.

Q. Who walked into that room? A. Only the three of us.

Q. The doctor and Namasivayam? A. I do not know where they went.

Q. Where did Namasivayam say that he would like to have the room? A. When my sister conveyed the message to us from my 30 brother Namasivayam said that.

Q. What did he say? A. He said he would prefer to have that room because he could move about freely.

Q. You had no objection? A. No, we went to the bath room and washed our faces.

Q. Where did you meet the men again? A. I met them next in the lounge.

Q. They were there just as they had been before? A. Yes.

Q. No change in them at all? A. No.

Q. They had not changed their clothes? A. No. 40

Q. Then you went to the pictures? A. Yes.

Q. And returned? A. Yes. We returned after the pictures and then we met my brother and he said you can have the room. He said he had spoken to Welsh and we can have the room.

Q. And you went in there and again Mr. Namasivayam said he wanted that room? A. No, the request was made only once.

Q. And you kept to that request and went and put on your saree in the bath room? A. Yes.

Q. All three of you dressed in the bath room? A. Yes.

Q. After the dance you sat up all the night in the clothes that you had returned in from the dance? A. Yes.

Q. You did not feel cold? A. No. We just sat there as we were.

Q. The gentlemen did they change their clothes? A. I cannot remember. I think Dr. Samahin had taken off his coat and tie.

Q. Not his vest? A. No.

Q. You sat on that bed, all three of you? A. Yes.

Q. And the two men? A. In chairs.

(To Court :

Q. On which side of the bed did the three of you sit on? A. I think we were on two sides or one side I cannot remember.

Q. There were two sides and there were three of you did you all sit on one side? A. We sat on one side with our legs dangling. My sister and I sat on one side and Miss Ludowyke on the other side.

Q. Sat on the edge with your legs dangling? A. Yes.

Q. There was no couch in that room? A. No.

Q. You did not recline or rest? A. No.

Q. The next morning you dressed and left the place? A. Yes.

Q. You left fairly early? A. Yes.

Q. Without even waiting for breakfast? A. I cannot remember.

Q. Did you meet anybody before going away? A. No, I cannot remember.

Q. Did you not meet your brother that day? A. My brother came in the morning to take his shaving tackle.

Q. You came back on the 20th to Colombo? A. Yes.

Q. The baby was in Colombo who fetched the baby? A. I cannot remember. I cannot say how long after we returned the baby was brought.

Q. Your sister did not straightaway go for the baby? A. I cannot say.

Q. Was the baby fetched at all that day? A. I cannot remember. We came to Colombo at about 8 o'clock.

No. 86
Plaintiff's
Further
Evidence
Merita de
Costa
Cross-
examination
—continued.

(To Court :

Q. Did not the plaintiff at once rush to the telephone and say where is my baby and ring up Mrs. Namasivayam? A. I cannot remember.

Q. When was the baby brought? A. I cannot remember.

Q. Two or three days later? A. I cannot remember.)

Q. After that of course the next time Stannie came down was for the August Governor's Cup? A. Yes.

Q. In the meantime Mrs. Ludowyke stayed there a fortnight? A. Yes.

Q. Between the Governor's Cup day and the 22nd the 1st defendant 10 was again in Jaffna? A. Yes.

Q. And you deny that Dr. Samahin came there as stated by the servants? A. Yes.

Q. You have been in Kodikanal from 1936 and you used to come down for the long vacation every year? A. Yes. That is December to February.

Q. You used to spend that time with your sister? A. Yes. In 1939 I came down for good.

Q. And till the 26th August you continued to stay with your sister? A. Yes. 20

(To Court :

Q. Why did you leave St. Bridgets? A. I used to get malaria very badly and the doctor suggested a cool climate and I went to Kodikanal. I left St. Bridgets when I was 11.)

Q. All your holidays were spent with your sister? A. Yes.

Q. And you were there till 26-8-41 from the time you returned for good from India? A. Yes.

Q. Your father had left Merlton in November, 1941, and from November, 1941 till August, 1941 you still continued to be at Stannie's and on the 26th your father took you away to Kandana? A. Yes. 30

Q. Can you give any reason why your father did that? A. Yes.

Q. Prior to that also between November, 1940 and February, 1941, also he was there alone? A. I do not know. My father is a widower. He is married a second time.

Q. And he is not living with his wife? A. Yes. I do not know when they ceased living together. In 1936 they were living together. In 1939 when I came back they were not living together.

Q. So then your father was lonely ever since you returned? A. Yes.

Q. That is your father was lonely from the time he left Merlton till 40 26-8? A. Yes.

Q. Why this sudden departure on 26-8? How came he to be more lonely then? A. He had made earlier arrangements but because Stannie was in Jaffna he allowed me to stay till he returned. I cannot say why he took me away in November, 1940.

No. 86
Plaintiff's
Further
Evidence
Merita de
Costa
Cross-
examination
—continued.

Q. Stannie went to Jaffna in 1941 and he knew about it only a short time before he went? A. I do not know. I first heard he was going when he was packing.

Q. Your sister got ill on the 11th July? A. No earlier. I sent for Dr. Gunasekera and Dr. Samahin. I telephoned to Dr. Samahin 10 myself.

Q. It is not correct that he came casually? A. No.

Q. You telephoned first to Dr. Gunasekera and then to Dr. Samahin? A. Yes.

Q. This was after lunch? A. I rang up Dr. Samahin at the Orient Club.

Q. Dr. Samahin got the second message but he came first? A. Yes.

Q. Why does he say he dropped in there casually and was told your sister was ill? A. I do not know.

Q. He is mistaken? A. I telephoned him because he is a friend 20 of the family. I spoke to him on the phone and he himself answered the phone.

Q. You took him into the room? A. Yes.

Q. You were there with your sister and the ayah? A. Yes, and when Dr. Samahin turned up I went and brought him into the room. I accompanied him to the room.

Q. Then Dr. Gunasekera turned up? A. Yes. When I heard his car I went to the verandah and I took him also into the room and left him there and went away.

Q. Dr. Gunasekera is also making a mistake when he says when he 30 came there on that day he saw Dr. Samahin in the room and you were in the verandah? A. He is making a mistake. Dr. Samahin came daily to see my sister. If he does not come in the morning he comes in the evening.

Q. He used to come into the room and see your sister? A. Yes. I have taken him into the room while she was in bed.

Q. Would you be in the room always? A. Yes.

Q. You did not leave the room when Dr. Samahin came? A. No. It is untrue that Dr. Samahin was seated on my sister's bed when my sister was ill. I used to be in the room till he left.

40 Q. Have you seen him seated on your sister's bed? A. No, I have always given him a chair to sit and I have seen him seated on that chair.

No. 36
Plaintiff's
Further
Evidence
Merita de
Costa
Cross-
examination
—continued.

(To Court :

Q. On the first day that Dr. Gunasekera came and went away soon after that Dr. Samahin came? A. Yes.

Q. Your sister was in bed for several days after that? A. About two weeks.

Q. In the course of those two weeks she got unwell? A. Yes.

Q. How long after Dr. Gunasekera's last visit was that? A. The day after he ceased to come.)

Q. Do you remember the time you were in hospital? A. Yes.

Q. Can you tell me the dates? A. In October and August. 10

Q. February? A. Yes, not August.

Q. Can you give me the dates in February? A. I cannot give the dates.

Q. You remember your sister's period came on the day after Dr. Gunasekera stopped coming? A. Yes. The ayah inside the room was Jane.

Q. Joslin was there when your sister was ill? A. Yes.

Q. Why should you change your sister's napkins when there was Jane? A. I suppose she wanted me to do it, after all she is my sister.

(To Court :

Q. Why get a sister when there was a menial? A. She wanted me to do it. I did not change it, I helped her to change it. 20

Q. Had you done that before this? Why did not the ayah do that? Did your sister use a bed-pan during this time? A. Yes.

Q. And did she perform all her natural functions in the bed-pan? A. Yes.

Q. Did you remove that? A. No, that was done by the ayah.

Q. After having a motion the bed-pan was taken away? A. Yes.

Q. Is not that as bad a job as attending to a woman in her monthlies? A. I only did the necessary things she wanted. 30

Q. Why did not the ayah do that?)

Q. You told the Court that she had her period. Did you see it yourself? A. Yes.

Q. You must have done something more than merely giving her the things? A. I helped her to change her linen.

Q. Was she sponged during that period? A. I cannot remember.

Q. She was in bed for 14 days? A. She was not sponged. I have washed her face various times.

Q. When you were in hospital were you not sponged daily? A. Yes. 40

Q. Once or twice a day? A. Twice a day.

Q. This lady was 14 days in bed? You saw how it was done in the hospital? A. She was so much older than I am.

Q. What do you mean by that therefore? A. She would not like to be sponged.

Q. What was the objection although she was older? A. I do not know.

Q. Did your sister ever ask you the dates when Dr. Gunasekera came? A. No.

Q. You had left the house in August? A. Yes.

10 Q. You know nothing about the Police dance? A. No.

Q. You attended the Medical dance? A. Yes.

Q. You said you rang up Stannie? A. Yes.

Q. When had arrangements been made? A. I had been informed that all arrangements were made.

Q. You came from Kandana in the morning? A. Yes.

Q. Straightaway you rang up Stannie? A. Yes.

Q. If everything had been arranged why did you when you came down ring him up and say I hope you are going to the dance? A. I do not know, may have been a slip.

20 Q. The last time you were in Colombo you were aware that all were going to the dance? A. Yes.

Q. You came to Colombo and you had heard no change? A. No.

Q. You had heard nothing about 1st defendant not going? A. No.

Q. But you rang him up and said I hope you are going to the dance? A. That may have been a mistake.

Q. Is it not the fact that you knew when you came that Stannie had refused to go to the dance? A. No.

Q. Nobody told you that he had refused to go? A. No.

80 Q. You just rang him up and said I hope you are going to the dance? A. May have been a slip.

Q. And he told you he was not going? A. Yes.

Q. Then you did not keep the receiver down and you got your sister up to try and persuade him? A. Yes.

Q. When he said he had a brief you told him hold the line and got your sister up? Why? A. I was very sorry.

Q. You were not surprised? A. I was more sorry than surprised. I wanted to go to the dance and have a good time.

Q. When he said he was not going? A. I was disappointed.

40 Stannie has told us he said he was not going and his wife tried to persuade him and he has also said..... (Evidence of Mr. Alles put to witness.) (A name is written on a paper and shown to the witness.) I do not know a person by this name.

No. 36
Plaintiff's
Further
Evidence
Merita de
Costa
Cross-
examination
—continued.

- Q. Was there a person by that name at Kandana? A. No.
- Q. Was it suggested that your father thought it best that you should go to the dance and meet that gentleman there? A. I went to the dance not to meet anybody but to enjoy myself.
- Q. You remember the dinner that night? A. Yes.
- Q. All dined together? A. Yes.
- Q. Dr. Samahin and the Ludowykes also turned up? A. Yes.
- Q. After the dinner all walked to the portico? A. Yes.
- Q. And got into the cars? A. I happened to go to the room soon after dinner and I saw Stannie hand some money to sister. 10
- Q. Why was that? A. She was in the room and I went in.
- Q. The money was for what? A. I do not know.
- Q. You were the guests of Dr. Samahin that night? A. I suppose it was to buy the tickets or something.
- Q. Dr. Samahin was the host? A. May be.
- Q. When did your sister go into the room? A. She went ahead of me and I went in later and I saw Stannie giving her some money. I do not know how much.
- Q. On this night after the dinner before going to the dance you had certain things to do? A. Yes. 20
- Q. And you were doing them? A. Yes.
- Q. So how can you from the guests room see? A. I walked into her room from my room and then I saw the money being given.
- Q. It is not correct that you and your sister had gone into the room to do the final touching up? A. No.
- Q. He kissed her good bye? A. Yes.
- Q. Anything more? A. He asked her to have a good time.
- Q. Saw the kiss? A. Yes.
- Q. You came back and found that the 1st defendant had gone and the house was empty? A. Yes. 30
- Q. It was a big shock? A. Yes.
- Q. Alice came running out and said that master had left? A. Yes
- Q. When this was said questions must have been asked whether he went and so on? A. No.
- Q. You just telephoned your brother and went to Kandana? After the return were any questions asked? A. No, sister was in a distraught state.
- Q. Were you not anxious about the baby? A. Yes.
- Q. Were you not anxious to know whether it was dead or alive?
A. Yes. 40

Q. What steps did you take? A. We sent brother to find out where Stannie had gone to. We sent to Marcus de Silva's place and to Namasivayam, to see whether he had gone there.

Q. Why did you not think of his relatives? A. Because Stannie was always angry with them and he used to say nasty things about them.

Q. From the time he married? A. From the time I can remember.

Q. From 1939 onwards? A. No, at other times also.

Q. Are you aware that Stannie's mother came to see your sister 10 somewhere in May? A. Yes.

Q. And there was some unpleasantness? A. Yes.

Q. From that time those nasty things were said? A. Yes.

Q. The displeasure between Stannie and his mother was after May? A. Yes.

Q. What was the unpleasantness about? A. I could not tell you because I was down with fever and I was in the room.

Q. But after you got well? A. I asked my sister and she told me that 1st defendant's mother had come and spoken to her that she is going about with Dr. Samahin.

20 Q. Was that true or not? A. We were going out with Dr. Samahin.

Q. When two women go about with a man people would not talk about it, what was the complaint of the old lady, was it not something different? A. Sister told me that she had come and spoken to her with regard to her going about with Dr. Samahin.

Q. And that there was gossip? A. She did not tell me that.

Q. You knew as a fact that that was not true? A. Yes.

Q. There was no reason for anyone to go gossiping about? A. Yes.

30 Q. From that date 1st defendant's relations with the mother had become strained? A. Yes.

Q. Stannie took his wife's part in that matter? A. Yes.

Q. Now you know that he had left his wife? A. Yes.

Q. Did it not strike anybody then that he must have gone to his mother's? A. No.

Q. Why not? A. He was angry and none of us thought he would go there.

Q. It never struck you that he had gone to his mother? A. No.

Q. Instead Dr. Samahin was telephoned to? A. No, he was there.

40 Q. When you returned from Kandana he was there? A. No he came in the morning.

No. 36
Plaintiff's
Further
Evidence
Merita de
Costa
Cross-
examination
—continued.

Q. What time was he there? A. I was with sister and my uncle and the rest were in the verandah. I heard the bell ringing and I ran out and a letter was given. It was then that I saw Dr. Samahin there.

Q. What time was this? A. Between 10 and 10-30. It was a registered letter.

Q. Then it was that you saw Dr. Samahin? A. Yes.

Q. Before that where were you? A. In the dining room with my sister as she was crying and so on.

Q. You were with your sister from the time you came from Kandana?
A. Yes. 10

Q. And that time after the letter was received was the first time that day you saw Dr. Samahin? A. Yes.

(To Court :

Q. You were comforting your sister inside the house and you heard a bell ring and you went out and saw a postman and at the same time you saw Dr. Samahin? A. When I went to the verandah I saw Dr. Samahin.

Q. The letter and Dr. Samahin were both on the verandah? A. Yes.)

Q. You know nothing about his being telephoned to and his coming 20 between 8 and 9? A. No.

Q. Nor did you know he had come a second time? A. No.

(Evidence put to witness—Mrs. Alles') I do not know about that.

Q. When the baby was born did you go to the nursing home? A. Yes.

Q. You never met Dr. Samahin there? A. No. I went on several occasions I never met the doctor there.

(Dr. Samahin's evidence put to the witness.)

I am now staying with my father at Mutwal.

Q. Your sister stays with you? A. Yes. 30

Q. Are you not aware of the terms of the agreement about the child after this action was filed? A. No. But I am aware about the arrangement about seeing the child. She was to see the child twice a week.

Q. She has told us that was subject to the condition that she did not take the child to two or three places one of which was her father's house?
A. Yes.

Q. On Christmas day was the child in your father's house? A. Yes. For lunch on Christmas day.

Q. She was there on Christmas day and New Years day? A. Yes. 40
(Shown two photographs) I took both these photographs.

Q. They were both taken on the same day? A. I remember taking some snaps. I cannot swear that they were both taken on the same day. They were both taken at Mrs. Jayewickreme's house.

REXD. Nil.

Signed. R. F. DIAS,
D. J.

No. 36
Plaintiff's
Further
Evidence
Merita de
Costa
Cross-
examination
—continued.

Before Mr. Ameresekere closes his case he says with regard to the Chartered Bank cheque he finds that the information which his Proctor had received is not correct. He says that the information was received
10 from a professional gentleman who was witness in this case and whom he had asked to be in attendance so that the Court may permit Counsel to call him to show that he made that statement. He says he has sent two messages and a car but as he is a doctor he is not available. He states he makes this statement and expresses regret to Mrs. Alles and to Dr. Babapulle. He says it was a pure mistake on his part and that he acted on *bona fide* information. He says he had not searched the bank before he made the statement.

Mr. Wickremanayake says he has Dr. Babapulle available but now that this statement is made he is not calling him.

20 Mr. Ameresekere says it is a *bona fide* mistake made on information given by a gentleman who was prepared to come but he is not available at the moment. He closes his case reading in evidence P 1 to P 48A.

Mr. Wickremanayake wants to know if the Court desires to call any witnesses in the exercise of the Court's discretion. He says that the witnesses are present.

I do not propose to exercise my discretion under section 165. It is now nearly 4 p.m. Counsel ask that they be allowed to address on Monday. I think this is reasonable.

Signed. R. F. DIAS,
D J.

30

No. 37.
Addresses to Court.

No. 37
Addresses
to Court

1-2-43.

Counsel as before.

MR. OBEYESEKERE addresses the Court.

Cites 1930 Appeal Case 1 at 7. Lord Aitkin's judgment at pages 18 to 22. Lord Pankerton's judgment pages 25 and 26.

41 N. L. R. 351 at 357.

Cites s. 74 Evidence Ordinance.

40

Sgd. R. F. DIAS,
D. J.

No. 37
Addresses
to Court
—continued.

MR. OBEYESEKERE continues his address.
Alexander vs. Alexander 164 English Reports 928 at 931.
(1923) 25 N. L. R. 273 at pages 375 and 377.

Sgd. R. F. DIAS,
D. J.

Further hearing tomorrow.

Sgd. R. F. DIAS,
D. J.

2-2-43.

Counsel as before.

10

MR. OBEYESEKERE continues his address.

Cites s. 74 Evidence Ordinance.

38 N. L. R. Ord. 12 of 1864. Vol. 123 L. T. 240. Also reported in
36 T. L. R. 1920 Pro. 17 at 19. 89 L. J. Pro. 151.

MR. WICKREMANAYAKE addresses the Court.

Further hearing tomorrow.

Sgd. R. F. DIAS,
D. J.

3-2-43.

Counsel as before.

20

MR. WICKREMANAYAKE continues his address.

Mr. Wickremanayake in arguing concedes that if his charges of
adultery fail that the Court will probably find that the 1st defendant has
maliciously deserted the plaintiff.

Luncheon interval.

MR. WICKREMANAYAKE continues his address.

Sgd. R. F. DIAS,
D. J.

Case postponed for tomorrow.

Sgd. R. F. DIAS, 30
D. J.

4-2-43.

Counsel as before.

ADVOCATE WICKREMANAYAKE continues his address.

Cites 18 N. L. R. 65. 42 N. L. R. 311. 4 N. L. R. 184.

Luncheon interval.

MR. WICKREMANAYAKE continues his address.

Sgd. R. F. DIAS,
D. J.

5-2-43.

40

Counsel as before.

MR. WICKREMANAYAKE continues his address.

He cites 25 N. L. R. 241 at 247.

Section 112 has to be dealt with by evidence in the ordinary way without any artificial restriction.

No. 37
Addresses
to Court
—continued.

Cites also at page 249. 1 Sim. & S. at 157.
Refers to Cameron p. 273.
Further hearing on Monday.

Sgd. R. F. DIAS,
D. J.

8-2-43.

Counsel as before.

10 MR. WICKREMANAYAKE continues his address.

Refers to Eaden & Holland 236, 230.

Cites 25 N. L. R. 241. Taylor Vol. II. 41. 27 N. L. R. 289.

Refers to the Aserappa Divorce case.

26 N. L. R. 113. 10 L. Rec. 2.

MR. AMERESEKERE addresses.

Cites 8 C. L. W. 4 also reported in 16 L. Rec. 206.

Further hearing tomorrow.

Sgd. R. F. DIAS,
D. J.

20 9th February, 1943.

Counsel as before.

MR. AMERESEKERE continues his address.

7 Ameer Ali 784-785.

The Court cites 4 C. W. Rep. 241. Ram. (63-68) 120.

Luncheon interval.

Sgd. R. F. DIAS,
D. J.

MR. AMERESEKERE continues his address.

Case postponed for tomorrow.

80

Sgd. R. F. DIAS,
D. J.

10th February, 1943.

Same appearances as before.

MR. AMERESEKERE continues his address.

42 N. L. R. 70.

Luncheon interval.

Sgd. R. F. DIAS,
D. J.

MR. AMERESEKERE continues his address.

40 Mr. Ameresekere wants me to note that while he attacks the weight to be attached to the document 1D17 in the light of his argument regarding 1D1 he wishes me to record that he does not in any way admit its

No. 37
Addresses
to Court
—continued.

admissibility and that he concurs with everything that has fallen from Mr. J. E. M. Obeyesekere on this point. He says it is inadmissible and that 1D17 is not a public document, it has not been proved, nor produced in terms of section 154.

Case postponed for tomorrow.

Sgd. R. F. DIAS,
D. J.

11-2-43.

Counsel as before.

MR. WICKREMANAYAKE says that when 1D17 was produced no 10 objection to its admissibility was raised nor was any objection taken by either side or that the document was not properly proved. Now the admissibility of the document is attacked and also its weight is attacked collaterally. The Court asks Mr. Wickremanayake whether the resthouse-keeper Jaffna had the original book with him. Mr. Wickremanayake says the original resthouse books were in Court—no questions put in cross-examination to Mariampulle. He therefore asks for an opportunity for prove 1D17. I ask Mr. Wickremanayake under what provision of the law he makes the application and to argue the point. He submits he has been lulled into the sense of security, he submits parties cannot sit by in 20 this way—Paramount duty of the Court is to do justice.

MR. AMERESEKERE objects to the application. Submits s. 165 does not apply. It may be the Court has reserve powers, but they must only be exercised with great care and discretion. Submits no one has any right to bring inadmissible documents to Court and assume that objection will not be taken. The proper document must be placed before the Court.

MR. DAVID also objects to the application.

MR. WICKREMANAYAKE refers to s. 114.

ORDER

I wish to express no opinion beyond stating that I do not think that 30 I would be justified in exercising any reserve powers or discretion which I may have either under s. 839 of the Civil Procedure Code or under any other section. This trial has already lasted nearly 30 days and I am not prepared to prolong this trial. But I make this order—let a proper summons issue to the Chairman P. R. C. Ratnapura and the Chairman of the U. D. C. Jaffna to forward to this Court the original resthouse books. When received they will be inspected by counsel or the proctors on both sides and in their presence sealed with the seal of this Court and kept available in case it becomes necessary hereafter to see what those books contain, it being promised that I shall not look at them but shall proceed 40 strictly on the documents before me. This does not mean that I hold that 1D17 is inadmissible or admissible or that the line of argument now put forward by Mr. Ameresekere is sound or unsound. I shall deal with

all these matters at the proper time in my judgment. I think there is ample evidence before the Court on which to found a judicial decision.

No. 37
Addresses
to Court
—continued.

Sgd. R. F. DIAS,
D. J.

MR. AMERESEKERE continues his address.

Mr. Ameresekere undertakes to finish the summing up tomorrow.
I will sit till 4-30 p.m.

Case postponed for tomorrow.

Sgd. R. F. DIAS,
D. J.

10
12-2-43.

Counsel as before.

MR. AMERESEKERE continues his address.

Cites (1934) A. I. R. Privy Council, 49. (1942) A. I. R. Madras, 129.
(1942) Vol. XIII. Cr. Law Journal 717 at 718.

Mr. Ameresekere in arguing the question of Medico Legal evidence argued that the question arising from s. 122 of the Evidence Ordinance must be dealt with separate and distinct from the rest of the evidence.

Luncheon interval.

20 Refers to Hartman p. 63. Medical Journal of Obstetrics and Gynæcology—Dr. Fluman's article 75. (66, 17, 12, 14, 31, 68, 11).
Hartman, 66.

Further hearing on Monday.

Sgd. R. F. DIAS,
D. J.

15th February, 1943.

Same appearances.

ADV. MR. AMERESEKERE continues his address.

80 A. I. R. (1916) Madras 338 at 342. *Bury vs. Philphot*, 2 Mill & Keen's Reports 349 at 352.

I ask Counsel as to whether Dr. Fluman is alive or dead. He says he does not know.

Tweedy 33. Delee 70 typed in the record as Dilly. Hartmann 145, 146, 198. Normal Haire. Dr. Cox. Taylor 47. Johnstone 93. *Clarke vs. Clarke* 92, Vol. 108, L. J. R. P. 92 and at (1919) A. E. R. 2, page 60.

Luncheon interval.

Sgd. R. F. DIAS,
D. J.

40 C. A. V.

Authorities to be sent up at once.

Sgd. R. F. DIAS,
D. J.

No. 38.

Plaintiff's Motion to call Dr. Theobald.

We move to add the following to the Plaintiff's list of witnesses in the above case and move for summonses on them.

List of Witnesses.

67. Dr. G. W. Theobald of Craig Appin, Dickoya.
68. Mrs. C. O. Perera of Angoda.

Colombo, 21st January, 1943.

Sgd. Illegible,
Proctors for Plaintiff. 10

Received notice. I object.

Sgd. H. A. ABEYWARDENE,
Proctor for 1st Defendant.

Sgd. L. B. & L. M. FERNANDO,
Proctor for 2nd Defendant.

 No. 39.

Judgment of the District Court

JUDGMENT

The plaintiff is seeking a judicial separation from the 1st defendant alleging malicious desertion on 19-12-1941. The husband denies the 20 charge and counter-charges her with committing misconduct with the 2nd defendant and asks for a divorce *a vinculo*.

This trial, apart from its length of thirty-one days, is remarkable for several reasons. Every material fact has been traversed by the opposite side. Every material witness has been called a liar, and in some cases have been demonstrated to be so. The evidence has been sifted grain by grain. Difficult questions of medical jurisprudence have also been raised.

The parties went to trial on the following issues :—

1. Did the first defendant on or about 19th December, 1941, wrongfully and maliciously desert the plaintiff? 30
2. If so, is the plaintiff entitled to a decree of separation *a mensa et thoro*?
3. Is the plaintiff entitled to the custody of the children?
4. To what alimony is the plaintiff entitled?

- No. 89
Judgment
of the
District
Court
27-2-43
—continued.
5. What sum, if any, is payable to plaintiff for the maintenance of :
 (a) the girl Hortense ?
 (b) the boy Joseph Richard ?
6. Did the plaintiff commit adultery with the second defendant :
 (a) on various occasions between 15th February, 1941, and 20th March, 1941, at "Merlton", Gregory's Road, Colombo ?
 (b) on various occasions between 20th April, 1941, and 20th August, 1941, at "Merlton", Colombo ?
 10 (c) on several occasions between 10th April, 1941, and 14th April, 1941, at Bandarawela at the boarding house run by Mr. & Mrs. Outschoorn and elsewhere ?
 (d) on the night of the 18th April, 1941, at Bandarawela at the house of Mr. Montague Jayawickrema ?
7. Is the child Joseph Richard not a son of the first defendant ?
8. If any part of issue 6 or issue 7 is answered in favour of the first defendant is the first defendant entitled :
 (a) to a divorce ?
 (b) to the custody of the child Hortense ?
- 20 9. If any part of issue 6 is answered in the affirmative to what damages is the first defendant entitled to against the second defendant ?

I answer them as follows :—

1. No.
 2. No.
 3. (a) She is not entitled to the custody of Hortense.
 (b) She is entitled to the custody of Joseph Richard.
 4. Plaintiff is not entitled to any alimony.
 5. First defendant is not bound to maintain Joseph Richard. The
 30 question of maintaining Hortense does not arise as the first defendant is entitled to her custody.
 6. (a) Yes.
 (b) Yes.
 (c) I find that misconduct took place between the plaintiff and second defendant on the night of 12-4-1941 in the second defendant's room at the boarding house of Mrs. Outschoorn at Bandarawela. There is no proof that any other misconduct was committed at the house of Mrs. Outschoorn or elsewhere.
 40 (d) Yes.

No. 39
Judgment
of the
District
Court
27-2-48
—continued.

7. I hold that Joseph Richard is not a child begotten by the 1st defendant.
8. (a) Yes.
(b) Yes.
9. Rs. 15,000.

The first defendant is a son of the late Dr. F. R. Alles, a Colombo Chetty, who had a distinguished career in the Medical Department of Ceylon. The plaintiff is the daughter of another Colombo Chetty, Mr. Paul de Costa, by his Burgher wife Miss Neydorf. That lady is dead, and Mr. Paul de Costa has re-married, but is living apart from his wife. The 10 plaintiff has a sister Merita and a brother Noel, both of whom are witnesses in this case. The Alles' family and the de Costas are related.

The 1st defendant met the plaintiff in 1927 and fell in love. He then went to England for his studies and returned as a barrister in 1931. He met the plaintiff at the Law Dance in the following year and became engaged to her secretly. This was because his parents objected to the marriage, on the ground the lady was the off-spring of a mixed union. The letter 1D18 of 12-4-33 from the first defendant to his mother shows that there was opposition to this marriage. Such an objection seems 20 absurd and unreasonable. The families were related and were of equal status and belonged to the same Church. The 1st defendant was an advocate and there was nothing against the character or the suitability of the plaintiff to be his bride. Nevertheless such prejudices prevail in certain quarters in spite of the endeavours of wiser persons to promote harmony and good-will between the various communities, castes and races by encouraging social intercourse. In defiance of the opposition of the Alles family the parties were married on 21st March, 1933. It was a love match, and the evidence conclusively proves that until the middle of November, 1941, the first defendant loved his wife dearly and proved to be a loyal, affectionate and trusting husband and a good father to their 30 daughter Hortense. One can say that their household was a happy home.

On his marriage the first defendant lost the support he was receiving from his parents. His father died leaving all he possessed to his widow with full dominium and disposing power. The mother did not support the first defendant who was thus thrown on his own resources to earn a livelihood and maintain his wife and child. Mr. Alles, however, did not have much of a practice. He acted for some time as Crown Counsel, but was not confirmed in that post. He had influential friends whose aid was solicited to secure his advancement, but hitherto without success. It is also clear that he and his wife were maintaining a standard of living which 40 they could ill afford. One characteristic common to both of them was their craving for amusement and pleasure—attending dances, promenade concerts, giving parties on the slightest provocation, etc. He was not a man who would burn the midnight oil and attend to the work he got. He preferred the dance floor to his study. The plaintiff too is a fashionable woman who liked to dress well and appear smart. The inevitable result

was that Alles became hopelessly involved in debt. He was moreover of a generous disposition as proved by the way he surrendered his interests in a *fidei commissum* property to his sister—(1D6 dated 26-1-1939) at a time when any other man would retain whatever property he owned. He was so financially embarrassed and his credit was at such a low ebb that his wife actually had to back his promissory notes for small sums like Rs. 200. They were so poor that Paul de Costa, Merita, and Noel stayed with them at their house Merlton, Gregory's Road, Colombo, so as to cut down expenses. The birth of the child Hortense, the medical attention the plaintiff had to receive before and after that child was born, and an operation for appendicitis which the first defendant had to undergo in 1940 all helped to swell their burden of debt. This condition did not arise suddenly. It was a chronic state of insolvency existing for a long time, and although Alles was made to admit that at the end of 1941 his financial position was hopeless, it is clear that it was no more hopeless in 1941 than it had been in 1940 or 1939. First defendant's happy-go-lucky disposition would have caused him no worry at all. He had no troubles. It was his creditors who had the troubles.

No. 89
Judgment
of the
District
Court
27-2-43

—continued.

Another characteristic of the 1st defendant is clearly brought out by the evidence—namely his intense loyalty and devotion to his wife in all circumstances, and even as against his own mother. After his marriage to the plaintiff resentment on the part of his parents appeared to die down in the sense that visits were exchanged on occasions like Christmas, the New Year, birthdays, etc. I am satisfied, however, that Mr. & Mrs. Alles never regained a truly cordial footing with Mrs. Alles senior and the other members of his family. They did not attend functions at Merlton for example. When his father died leaving everything to the mother, it would have been a tactful thing for the 1st defendant to be on good terms with his mother who had the power to cut him off with the proverbial shilling. In spite of this Alles risked being disinherited by standing for his wife through thick and thin. This is conclusively proved by the following letters :—P8 of 18-2-41, P26 of 20-2-41, P10 of 8-3-41, P13 of 23-4-41, P28 of 9-5-41, P38 of 9-5-41, P29 of 16-5-41, P27 of 15-8-41. It is also in evidence that when in April, 1941, his mother warned Alles about certain gossip which was current in Colombo regarding the association of the plaintiff with the 2nd defendant, Alles did not believe it, but took his wife's part and actually told his mother to mind her own business.

The implicit trust he placed in his wife's chastity and goodness and his devotion to her are proved by the following letters :—P13 of 23-4-41, P29 of 16-5-41, and P14 of 4-6-41.

It is the case for the plaintiff and the 2nd defendant that because the first defendant's financial position was in a hopeless state at the end of 1941, this model and devoted husband suddenly fell a victim to the machinations of his mother and brothers, who undertook to pay and settle his debts provided he abandoned his wife and happy home. Plaintiff's case is that on 19-12-1941 without any just cause her husband deserted her taking their child with him, and thereafter engaged himself in a con-

No. 39
Judgment
of the
District
Court
27-2-43
—continued.

spiracy to concoct a diabolically false case against his wife and best friend. People unless they are insane do not act in that way without some cause. It is therefore necessary at the outset to examine this alleged motive and ascertain whether there is any substance in the cause alleged by the plaintiff for her husband leaving her. The charge of adultery which the first defendant has preferred against his wife dishonours him as much as it does her. Mr. Alles is an advocate, and no doubt he hopes to advance in his profession, and perhaps to become a member of the Attorney-General's Department. Whatever the result of this case, the publicity and shame of these proceedings may affect his future advancement. 10

The suggestion is that being insolvent, he has trumped up a false case of adultery against his wife and his best friend, so that he can pay his creditors with the damages he hopes to recover from the 2nd defendant. This position appears to be inconsistent with the other position taken up, namely that Alles deserted his wife on a promise that his family would pay his debts if he did so. I have no hesitation in holding that Alles did not leave his wife because of any such promise by his family. He did so for the reasons he gave in the letter P2 which he wrote to his wife after he left her. I find on the facts that what Alles there stated is true. I do not believe that Alles engaged himself in any conspiracy or that he has 20 suborned or fabricated any false evidence. One is entitled to ask how it is that a man like Alles who was so deeply in love with his wife, who trusted her so implicitly, and took her side at all times even against his mother, suddenly changed round and became a doubting Didymus, a conspirator, and fabricator of false evidence against his wife and best friend? I hold that the answer to that question lies elsewhere. It was not due to a promise that his debts would be paid by his family.

It is necessary to deal with another matter, namely, the precise relationship which existed between the co-respondent Dr. Samahin and Mr. & Mrs. Alles. The second defendant is a Malay gentleman. He is married 30 to a Malay lady who is alive, who does not observe purdah, and who has borne him seven children. The second defendant is an officer in the Medical Department. At the material dates he was one of the anæsthetists at the General Hospital. The evidence however shows that like Alles and his wife, Dr. Samahin too was attracted to the pleasant side of life rather than to the drab work of an hospital. The impression one gets of his life is a succession of card parties at the Orient Club, attending dances, promenade concerts, pleasure trips and parties whenever an opportunity permitted. Mr. Alles had been acquainted with the 2nd defendant for a great many years, but there is some contradiction as to when the second 40 defendant first met the plaintiff. I am satisfied that they had met before the first defendant was operated on for appendicitis in January, 1940. No impropriety of any kind has been suggested as existing between this man and woman prior to February, 1941. It is quite clear that the friendship between Alles and the second defendant was something like that which existed between David and Jonathan. He was a good friend

who would stick more close than a brother. To Mr. Alles, Dr. Samahin was that Thousandth man of whom it has been said :

“ Nine hundred and ninety-nine can't bide
The shame or mocking or laughter.
But the Thousandth Man will stand by your side
To the gallow's foot—and after ! ”

No. 39
Judgment
of the
District
Court
27-2-48
—continued.

It was a fine friendship with absolute loyalty and mutual trust between the two men. Although Mr. & Mrs. Alles duly called on Mrs. Samahin, the latter never repaid that visit. She had no common interests with the
10 Allesses. The common interest which bound the second defendant to the Allesses was their mutual desire for pleasure. The second defendant was in and out of the Allesses' home at Merlton, Gregory's Road, sometimes visiting the place on more than one occasion daily. They went about together to dances and concerts frequently. It is therefore clear that although Dr. Samahin was a Malay and the Allesses were not Malays, they trusted him and his loyalty. There is one incident which may be dealt with at this point, namely, what took place on the night of Christmas Eve 1940. It has been stated that after midnight Mass on Christmas Eve there was a supper prepared at Merlton to which the immediate family
20 circle of the plaintiff had been invited—namely, Noel de Costa and Merita who were staying in the house and Paul de Costa, the father. It is alleged that the first defendant invited this Malay gentleman of the Muslim faith to partake of this supper, and when he did not appear, the first defendant telephoned to him to the Orient Club, and actually went to bring him to Merlton attired only in a sarong and shirt but the 2nd defendant who was playing cards would not come. The first defendant denies this. It is a small matter, but I am unable to accept the evidence led by the plaintiff and second defendant on this point for the following reasons :—The festivities connected with Christmas Eve and Christmas Day are essentially
30 Christian in the same way as Wesak is a purely Buddhist festival and Hadji a purely Muslim festival, Christmas Eve and Christmas are peculiarly connected with the home, the children of the home, and the immediate family circle in which a Muslim gentleman, however friendly with the family, could have no part—considering the wide divergence that exists between the Muslim and the Christian in regard to the divinity of Him whose birth the Festival commemorates. On Christmas Eve a husband and wife would be more concerned about Santa Claus and the giving of pleasure to their children and the entertainment of the members of the family circle, and Samahin would be the last person one would think of
40 in such circumstances. On the probabilities therefore I am unable to hold that the first defendant who would have been engaged in filling his daughter's stockings and decorating her room, would in the dead of night attired in a sarong and shirt go all the way to the Orient Club to bring a Muslim guest to attend a Christian festival. I am unable to accept the second defendant's evidence that on Christmas Day he called at Merlton to apologise for not coming to supper.

No. 89
Judgment
of the
District
Court
27-2-48
—continued.

With regard to the credibility of the witnesses I find as follows :—
The plaintiff has been proved to be a person who has made a false statement on oath to suit her own purposes. I hold that in regard to other matters too she is not a person whose word on questions in issue can be believed. I accept the evidence of the first defendant as true. He does not give direct evidence in regard to any of the facts relating to the alleged misconduct. He gave his evidence well. He was a much more satisfactory witness than his wife or the 2nd defendant. I am unable to accept the evidence of the second defendant as being true. He changed his evidence while he was in the box to bring it into line with that of the 10 plaintiff. He denied giving certain instructions to his own counsel, and then had to admit that he had done so. His demeanour was bad and at certain points he was cross-examined to a standstill. I hold that Miss Iris Ludowyke has committed perjury in the witness box, and that her testimony on disputed questions of fact is worthless. Miss Merita de Costa I hold has given untrue evidence, and so has Noel de Costa. I hold that Mr. Babapulle, Mrs. Montague Jayawickrema, and Mr. Errol Jayawickrema are truthful witnesses. I find that Mrs. Outschoorn and Perumal are not persons whose testimony can be relied on. I hold that the witness Schokman is endeavouring to state what is true. I hold that the servants 20 Alice and Pabilis are truthful witnesses. Joslin is not as satisfactory a witness as Alice and Pabilis, but I hold that her evidence in the main is true and the places where her evidence is unsatisfactory is due to her age and stupidity. The servants fared far better in the witness box than did the plaintiff, second defendant, Merita de Costa and Miss Ludowyke.

Turning to the expert evidence I have no hesitation in holding that Drs. Wickremasooriya, Attygalle, Navaratnam and Frank Gunasekera are honourable and truthful men who are giving evidence based on honest opinions. It is with regret that I am unable to take the same view with regard to Dr. Thiagarajah. He agreed to come into this case on the 30 distinct understanding that he would not be called as a witness. He was retained in order to instruct the legal advisers of the plaintiff to point out weak points in the medical evidence given by Drs. Wickremasooriya, Attygalle and Navaratnam and to suggest questions for counsel to put and generally to assist the plaintiff in regard to the medical aspects of her case. In fact, Dr. Thiagarajah is more an advocate than an expert witness. His cross-examination clearly shows his partisanship and how when dislodged from one point took refuge behind another. I further hold that being entirely biased in favour of the side which retained him, he has in this case tried to twist scientific facts in order to accord with his theories 40 which he thought would help the plaintiff's case. The reasons for these conclusions will appear in this judgment.

On the question of onus, it will be for the plaintiff to satisfy the conscience of the Court that her charge of malicious desertion against her husband has been established. Admittedly, she closed her case without discharging that onus. Her counsel has admitted that this was deliberately done so as to avoid calling the plaintiff, before Mr. Alles' case was closed and his witnesses cross-examined. The plaintiff thereby gained

the benefit of giving evidence herself and calling her evidence at the end of the case. For the reasons which I shall give presently, I hold that she has failed to prove that the act of her husband in leaving Merlton on the night of 19-12-41 amounts in law to malicious desertion. I hold on the facts that it was her conduct which really amounted to constructive malicious desertion, and that in the circumstances, her husband was justified in leaving the house.

No. 39
Judgment
of the
District
Court
27-2-43
—continued.

Everybody is agreed that with regard to the counter-charge of adultery by the husband the onus placed upon him by law is as heavy as that imposed on a prosecutor in a criminal case—there being a presumption of innocence in favour of the wife and the co-respondent. The procedure regulating matrimonial actions in Ceylon is codified. Sections 600, 601 and 602 lay down the burden of proof. The Court has to be satisfied not only as to the facts which the parties choose to place before the Court, but it must also go further and satisfy itself whether there are any statutory bars in the way of granting the relief claimed. For example, there is a sort of allegation made by the plaintiff and the co-respondent that the husband has been guilty of improper behaviour with a Mrs. Namasivayam, and that if this does not operate as a bar to the relief he claims, it will at least reduce the damages claimable against the 2nd defendant, in the event of the Court holding the charges of misconduct proved. I do not think it is necessary to burden this judgment by citing authorities.

It has been argued that in considering whether the charges have been proved, the evidence regarding each alleged act of misconduct should be considered and dealt with separately as if each episode was contained in an insulated compartment. I do not agree. But I do agree that each incident must be considered separately in order to ascertain whether that event did in fact take place. Subject to that I think a Court is entitled when it has all the accepted facts before it to view the case as a whole. In *Grover vs. Grover* (1836) 27 Empire Digest at pages 296-297 it was held that it is right and fit that all the circumstances in a divorce action should be taken together, and that when facts are established which are calculated to fix upon the conduct of the parties a criminal character (adultery was called “criminal conversation”) to view their conduct with reference to those facts. But it was pointed out that though calculated to give a colour to facts, any combination of minor circumstances will not supply the place of proof of facts. “It is my duty not to act upon suspicion only. I must look at the facts and see if there is a sufficiency of facts proved. It would be contrary to all principles of law, as well as of justice, merely on the ground of suspicious circumstances to infer actual guilt, unless it be proved that the parties met together and so met that they had convenient opportunity to carry into effect criminal intentions. If it should appear that they did so meet, and had such opportunity, I should concur in the conclusion that it could not be for any other purpose than for the gratification of their criminal desires. Nothing can be more unjust than to infer guilt from an interview between the parties in a place of public resort without any proof of indecent familiarities”. What this means is that I am entitled to regard all the facts which I accept to be true as one

No. 39
 Judgment
 of the
 District
 Court
 27-2-43
 —continued.

whole, in coming to a conclusion whether misconduct has or has not been proved. If however in one of the episodes there is a deficiency of proof, or if the facts which are accepted as true stop short at opportunity and would not *per se* justify a finding of adultery. I may not supplement that gap or defect by importing into it evidence from some other episode which may be fully proved.

It has been contended that on the question whether adultery has been committed, I may not consider the evidence led under issue 7 regarding the legitimacy or otherwise of the child Joseph Richard. Counsel put it in this way: If the Court finds that Alles is not the father of Joseph 10 Richard, it does not follow that Samahin (the 2nd defendant) is. I agree with that proposition; but I do not agree that the evidence which has been led under issue 7 is not admissible on the question of misconduct. It is because that evidence is admissible that issue 7 has been allowed to be framed. If it was not, that issue can find no place in this action. I shall return to this point later.

It has also been urged that unconventional conduct is not proof of adultery. I agree with that view. I likewise agree that if the proof stops short of misconduct and merely shows an opportunity to commit misconduct, the charge must fail. In this connexion great stress was laid 20 on *the facts* and *the finding on the facts* by the House of Lords in the Ross case (1929) Appeal Cases 1. I have been invited to hold that because the House of Lords on a certain combination of facts held that there was insufficient evidence to prove that Sir Charles Ross had committed misconduct with Mrs. Dalziel I should reach a similar conclusion in this case. I would observe with great respect that unless *the facts* of one case are exactly on all fours with *the facts* of another case, a Judge cannot decide the latter case simply because another Court decided a question of fact, not being a finding in rem, in an unconnected case in a certain way. The principles of *law* enunciated in the earlier case will, of course, receive the 30 most respectful consideration. Even at the risk of taking up space, the facts of the Ross case must be briefly stated as much importance was laid on it by counsel.

Sir Charles Ross wanted to go on an expedition into the African bush. Lady Ross refused to go, and it was decided that Sir Charles, a Mrs. Dalziel who was another explorer, and a Major Dugmore who was to be the official photographer should go "accompanied only by natives". Sickness prevented the major from going, and therefore Sir Charles and the lady went into the bush "with none near them but natives and wild 40 beasts". On the voyage it was seen that Sir Charles and the lady sought each other's society to the exclusion of others. The House of Lords thought there was nothing in this because they had a common interest in what they were about to do. The fact that they called each other by their Christian names was held to be a triviality. The foolish nicknames the lady gave Sir Charles were held to prove silliness but not infatuation. When sleeping on deck was permitted, the ladies being segregated on one deck and the men on another, the two air beds of Sir Charles and the lady

were found one morning side by side. In the absence of other evidence, the House of Lords thought that the beds might have been put together by accident when the sailors were cleaning the decks in the morning. A steward who said he saw the lady one morning in deshabelle in Sir Charles' cabin was disbelieved. When in the bush, the lady slept in the same tent as Sir Charles. The House of Lords refused to draw the inference that misconduct had therefore been committed, because there was another that could be drawn namely that it was a safety precaution taken "in a spot surrounded by natives and wild beasts where every night might be spent in uncertainty and suspense". Witnesses who stated they saw the man and the woman in a compromising position in New York were not believed. I do not see how those findings on the facts can govern the present case. The House of Lords was dealing with a European man and woman, who were explorers. We are here concerned with a Malay doctor and a Colombo Chetty lady. The ways, customs and habits of the sexes belonging to the Eastern hemisphere are not yet the same as those of the West. But I respectfully agree with the law laid down by the House of Lords in the Ross case. "Adultery is not a unilateral act. It is an act which can rarely be proved by direct evidence. It is a matter of inference and circumstances. It is easy to suggest conditions which can leave no doubt that adultery has been committed, but the mere fact that people are thrown together in an environment which lends itself to the commission of the offence is not enough, unless it can be shown by documents, e.g., letters and diaries, or antecedent conduct that the association of the parties was so intimate and their mutual passions so clear, that adultery might reasonably be assumed as the result of an opportunity for its occurrence". If for instance all that the evidence in this case shows is that the plaintiff and second defendant were keen on pleasure, and in giving effect to that desire placed themselves in a position in which there was an opportunity for misconduct *and there is nothing more* clearly the charges of adultery will fail.

It has been rightly pointed out that the evidence proves that until February, 1941, the plaintiff has been admitted to be a chaste wife and good mother. On the principle that nobody becomes base suddenly, and there being a presumption of continuance, I have been told that the onus lies heavily on the husband to prove that this good wife misconducted herself with the 2nd defendant. I entirely agree with that submission. It was held in *Alexander vs. Amos* (1860) 29 L. J. P. M. & A. 56 that where a wife has conducted herself with propriety during a long married life, the Court will not conclude that she has been guilty of the adultery charged to have been committed without the slightest regard to decency unless established by *cogent* evidence. The converse proposition will also apply. Where a husband during a long married life has been shown to have loved his wife dearly, and to have trusted her and stood by her on every occasion, the Court will not conclude that he suddenly and without cause began to hate his wife and entered into a conspiracy to charge her falsely with adultery, unless established by *cogent* evidence.

I have also been reminded of the rule laid down by the Privy Council in the Eliyatamby Case (27 N. L. R. 396), that there may be evidence in this case which while it may be admissible against the plaintiff, may not be legal evidence against the second defendant, and *vice versa*. I have kept that principle in mind and shall refer to it at the proper places.

A Divisional Bench has laid down in 26 N. L. R. 497 that it is the duty of the trial Judge in a divorce case to discuss the evidence and the details. I draw attention to this because of the lengthy nature of the evidence in a case which has assumed Marathon proportions. The first judgment which I wrote came to 137 pages. I have compressed it and have not dealt in detail with many topics which I should have done in a shorter case. Three counsel have addressed me at great length in the course of which most of the record consisting of nearly 1,000 pages and certainly all the material parts of the evidence has been read, analysed, commented on and criticised—not once, but three times over. I shall endeavour to deal with all the main questions raised.

The most convenient way to approach the facts is through the case for the first defendant. His charge of misconduct falls into three categories :—

- (i.) at Merlton, Colombo, between 15-2-41 and 20-3-41. 20
- (ii.) at Bandarawela between 20-3-41 and 20-4-41 on several occasions.
- (iii.) at Merlton, Colombo, between 20-4-41 and 20-8-41.

The scope of the investigation has to some extent been narrowed down by interrogatories administered by the plaintiff. With regard to the Colombo misconduct in his answer to the interrogatories the first defendant states that his case would be that this misconduct took place about three or four times every week. With regard to the Bandarawela misconduct his case is “ that the plaintiff committed adultery with the second defendant at Bandarawela between 10th April and 14th April, 1941, at the boarding house run by Mr. & Mrs. Outschoorn by day and during the same period at places which I am unable to specify. The said parties again committed adultery on the night of 18-4-41 at Bandarawela at a place I cannot now specify ”. This affidavit was sworn to on 29-10-42. In the light of the facts elicited at the trial we are able further to narrow down the alleged Bandarawela adultery. The first defendant’s proof has been directed to showing (a) that somewhere between the 10th and 13th April, 1941, at some time in the night between dinner and bedtime the plaintiff and the second defendant misconducted themselves in Dr. Samahin’s room at the boarding house of Mrs. Outschoorn. It will be observed that while the answer to the interrogatory places this misconduct as having taken place *by day*, the proof led makes it take place *at night* ; (b) the second Bandarawela misconduct alleged is that on the night of 18-4-41 at the bungalow of Mrs. Montague Jayawickrema at Bandarawela the parties again misconducted themselves ; (c) there is also some suggestion that the parties went to the C. L. I. Camp at Diyatalawa on 11-4-41 and returned late at night but it is unnecessary to consider this vague

charge because the evidence does not justify any adverse finding against the plaintiff and co-respondent; (d) there is also some evidence which shows that the plaintiff and the second defendant spent the night of 19-4-41 in the same bedroom at St. Andrew's Hotel, Nuwara Eliya, but as there were two other women and another man present in that room at the time, I do not think any misconduct could have taken place under such circumstances. I am of opinion that the proof on this point fails.

No. 39
Judgment
of the
District
Court
27-2-48
—continued.

We are thus really left with four incidents, namely: (1) the alleged Colombo adultery between 15-2-41 and 20-3-41; (2) the incident in the boarding house at Outschoorn's; (3) the incident at Mrs. Montague Jayawickrema's; and (4) the second Colombo adultery alleged to have been committed between 20-4-41 and 20-8-41.

The pleadings, interrogatories and answers to interrogatories on the question of adultery have now become crystallised in issue 6.

With regard to these charges of misconduct the plaintiff and second defendant assert that they are false and that the first defendant has suborned witnesses both at Colombo and Bandarawela to give false evidence. The first defendant on the other hand alleges that the plaintiff, the second defendant and various other witnesses have engaged in a conspiracy to pervert the course of justice by giving false evidence, calling false witnesses, and twisting science in order to defeat the ends of justice. No quarter has been given or asked for by either side. It is clear on the facts that one side or the other has attempted in this case to subvert the course of justice. The two stories are utterly irreconcilable and both of them cannot be true.

The first defendant who was acting as a Crown Counsel was sent to Jaffna to prosecute at the Assizes in February, 1941. Before leaving Colombo he requested Samahin to look after his wife and sister-in-law while he was away. At Jaffna he had to appear as junior counsel for the Crown in a very long criminal case known as the Myliddy case. The result was that the first defendant who left Colombo on the 1st February, 1941, never came back to Colombo to reside permanently until the 21st August, 1941. Except for a few brief periods during which husband and wife came together between those terminal dates they never cohabited. It is true to say that between 1-2-41 and 21-8-41 they had intercourse only on two occasions, viz., on 17-4-41 and 9-8-41. The fact that Mrs. Alles was a sexually starved wife is a factor which may have a bearing in this case.

In November, 1941, Dr. Wickremasooriya informed the husband that the plaintiff was in the fifth month of pregnancy.

In Merlton in February, 1941, there were living the plaintiff, the baby Hortense, the sister Merita, the brother Noel and a staff of servants. The chief witness who has been called to prove misconduct is the servant Alice. The ayah Joslin also comes into this part of the case, but she was engaged only a few days before the plaintiff left for Bandarawela on the 22nd March.

No. 39
Judgment
of the
District
Court
27-2-48
—continued.

The period involved is from 15-2-41 to 20-3-41. From this must be subtracted 27-2-41 to 4-3-41 when the plaintiff was at Jaffna. The period is thus narrowed to two periods—15th February to 27th February or 12 days and from 4th to 20th March, namely, another 16 days. It has been stated that during this period the late Mrs. Waldo Sansoni and some members of that lady's family stayed as guests at Merlton. It is curious that neither Alice nor Joslin was asked any questions whether Mrs. Sansoni and her children were living in this house at a time when misconduct was being committed at Merlton. Had they been questioned the witnesses may have been able to give an explanation. The questions not having 10 been asked it is unfair to found arguments adverse to the witnesses on facts which were not put to them.

The sketch of Merlton—1D3 should be studied. In the presence of counsel the Court inspected the premises and I desire to make the following observations :—The sketch is accurate. The glass panes of the doors of the rooms are opaque (ground glass or enamelled plain glass) which effectively prevent a person from looking into the rooms when the doors are shut. On the right wing there were sockets for curtain poles. I am satisfied by the experiment performed by counsel and me that it is possible for a person in the spare bedroom G to gain access to rooms D, E or K 20 without being seen by a person standing in the front verandah A. The high shoe-flower hedge on the back compound would effectively screen such person while in the act of passing across the back compound. I am also satisfied that a person in the kitchen verandah could see a car entering Merlton from the left hand gate. I saw no roller blind serving the window in the spare room G. I observed two nails on the frame, but what was secured by them I cannot say. The house at the time of my visit was requisitioned by the Military and had been used as a store and subsequently as an office.

Alice was employed as the cook on 10-11-1940. She is a poor but 30 respectable woman. In Ceylonese households the female servants do not usually obtrude themselves when the menfolk of the house are about, but keep to the background. Once the male members of the household go for their daily work it is usual for them, after their daily tasks are done to come into the living rooms and speak to the lady of the house or play with the baby. The plaintiff was a popular mistress. All the servants speak well of her. Alice says that the plaintiff used to call her "Ella," which is not an improbable thing. She says that shortly after Alles had gone to Jaffna she observed that the conduct of the plaintiff and the second defendant was not what it should be. Even before Alles left for 40 Jaffna the second defendant had been in and out of this house, but it was only after Alles had left Colombo and Alice was moving about more frequently in living rooms that she began to notice what she says she saw. I have no reason to disbelieve the evidence which Alice gives. The plaintiff who was leading a life of repression succumbed to temptation. Who was the seducer one cannot say. I cannot read into Alice's evidence that she meant to convey that Samahin started visiting Merlton for the first time

only after Alles went to Jaffna. Her evidence is to the effect that when Mr. Alles was in the house she would not come out, but after Alles left Colombo she had occasion to observe what was happening. She says that the 2nd defendant came after Noel had left for his work. He sometimes stayed for one hour and sometimes longer. He says that when he came he used to go into the spare room and rest. The witness does not say that this was an every day occurrence. All she says is that she saw this happening on three or four days. She says that she has seen the plaintiff coming out of the room in which the 2nd defendant was on three or four
 10 occasions—sometimes she was dressed in a saree and sometimes in a kimona. Alice is unable to fix times or dates. It is clear that she is referring to the first period as well as to the last. She has made it clear however that it was not until after plaintiff returned from Bandarawela that 2nd defendant began to sleep at night at Merlton. She says that she saw the plaintiff and 2nd defendant sitting on a settee talking to each other like “a newly married couple” (aluth joduwa). She swears that she has seen them with their arms round each other and that the plaintiff once rested her head on the second defendant’s lap. She says that after her work is done and the marketing is finished she comes to the living rooms in order
 20 to play with the baby and saw these things. She says that the plaintiff used to come towards the kitchen accompanied by the second defendant who sometimes had his arm round her. She says that they behaved as if they were married man and wife. She asserts that Merita knew all about it, and that everything that took place in the house was done with her knowledge, and gives that as the reason why she did not take it on herself to take action in the matter. Alice says that she has spoken to Merita about what was happening, and that Merita agreed that it was all wrong, and stated that her chances of marriage would be jeopardised when people came to know what was happening in the house.

30 Alice has a cataract in her eyes. For example, when her eyesight was tested in Court she was able to see my palm resting against my cheek but she could not see me stroking my nose with my finger. She was able to walk unaided from the witness box across the platform on which the Interpreter Mudaliyar’s table stands, and go across the Court without stumbling. I attach no importance to her failure to pick out Dr. Samahin in Court. The place was crowded and Dr. Samahin was sitting behind his counsel amongst a crowd of people. The fact remains that this woman although she has a cataract was employed as cook; and there is no complaint that her cooking was bad owing to defective eyesight or that she
 40 was unable to do her marketing. I believe a cataract is a progressive disease of the eye, which starts with a slight dimness of vision and gradually as the disease progresses it appears as if a veil is drawn over the eyes, but it does not prevent a person with a cataract until it becomes really serious from going about and seeing things. There is no proof that a person with a cataract sees things which do not exist. I watched the witness very carefully when giving evidence and I believe she is speaking the truth. Why should she lie? She says that her lady was a very good mistress. The suggestion is that she is giving false evidence for a money

No. 89
 Judgment
 of the
 District
 Court
 27-2-48
 —continued.

payment. I do not think that suggestion is at all justified. One allegation of bribery has been made regarding the witness Babapulle, but it failed and a public apology was tendered by counsel in open Court. Making all allowances for her lowly status, and the other criticisms which can be urged against people of her class generally, I think she was honestly stating what she saw. Her evidence establishes not opportunity merely but misconduct.

Assuming that something improper was going on at Merlton, it does not necessarily follow that every member of the household should be aware of it. For example, Noel de Costa who was away during the greater 10 part of the day would not necessarily be aware of what was going on. On the 10th of March, 1941, Noel who had been staying at Merlton, engaged a house of his own and left. Therefore, during a part of the first period 15th February to 20th March, 1941, Noel was not in the house. The plaintiff was at Jaffna from the 27th February to the 4th of March, so that if Noel left on the 10th of March he was only there for six days after plaintiff returned from Jaffna. It is also possible that callers and visitors at the house may see the second defendant there, and yet have no suspicions. The ordinary callers would know that second defendant was a good friend of the family. They would possibly know that Alles had asked 20 Dr. Samahin to keep an eye on his wife and sister-in-law, and it is possible that they may see the plaintiff and the second defendant in the house and yet not suspect anything improper. But there were other people in the house who must and should know if misconduct was taking place. Into this category fall the servants and Merita.

The other witness to this part of the case is Joslin. She had been twice employed at Merlton, first as cook and later as baby's ayah. She is an old woman in poor circumstances, and Mrs. Alles treated her with great consideration, even donating the trousseau of Joslin's daughter. She was employed as the baby's ayah about ten days before Mrs. Alles 30 went to Bandarawela. It is clear that when Joslin was called counsel for the 1st defendant had no instructions that she was in a position to give evidence regarding the first alleged adultery at Merlton. But a question put by the Court elicited that she had seen the second defendant at Merlton before she had seen him at Bandarawela. This tells against the suggestion of conspiracy. If there was a conspiracy, one would expect the witnesses to have been coached as to what they should say and counsel's brief would contain instructions as to what he should ask them. Joslin says that during the ten days she was at Merlton she saw the second defendant coming to the bungalow sometimes at 11 a.m., sometimes about 40 1 p.m. and 2 p.m. in fact there was no fixed time. She says that the baby usually sleeps at mid-day, and that she remains with the baby in the bedroom. In the evenings she takes the child in a perambulator to the park. She says that she has often seen the second defendant's car sometimes under the porch or under the temple tree on the left side of the house. She says that she has known the second defendant to be inside the spare bedroom, and that sometimes her mistress used to be in that

room with the second defendant. She says that although this struck her as improper she dared not speak to her mistress about it or complain to any one, or as one of the servants put it “Supposing I complained about the mistress to the master would he have believed me?” Joslin further says that when the baby awoke in the afternoon the child used to play and make a noise, and the plaintiff used to tell her that the doctor was asleep and should not be disturbed. Joslin refers to one incident. She says that on one occasion she was wheeling the perambulator with the baby along the pathway leading to the kitchen and the child was creating
 10 a disturbance because she wanted to get out and walk. Joslin swears that the second defendant was then in the spare room and she saw the plaintiff peeping through the blind to see why the baby was crying. She says that on that occasion the blind was drawn and that the plaintiff peeped through that blind. Why should I disbelieve the evidence of Joslin? Why has not the plaintiff called her personal maid Jane who was in the house at this time and who was there until the spouses separated and thereafter? Jane would be in a position to contradict Alice and Joslin. I think the reason why Jane is not called is because she might have contradicted a point which the plaintiff makes, namely, that it was Jane who slept by
 20 the entrance door at night whereas Alice says it was she.

It is said that the Sansonis stayed at Merlton during this first period. If so, why was this question not put to Alice or Joslin? Even if the Sansonis stayed there, how does it prove that Alice and Joslin are saying what is untrue? If the servants had admitted that the Sansonis had stayed in the house, and if they said that impropriety took place while they were staying there the position might be different. The witnesses may however have said that no impropriety took place when the Sansonis were in the house. After all, assuming that a man and woman were engaged in an improper liaison of this kind, it does not necessarily follow
 30 that misconduct and love-making took place at all hours of the day. If Alice’s evidence is studied it will be found that the love-making was in the early stages of the alleged intimacy. It was in the early days that the servants saw the holding of hands, etc. Thereafter the relationship stabilised itself. It is to be noted that Joslin does not speak of the doctor staying at night at Merlton before the plaintiff left for Bandarawela. On the contrary, she definitely says: “I did not see the doctor at night” at that period.

It will be found that when the servants’ evidence is analysed, after making full allowance for their imperfections and their conduct as servants,
 40 their evidence has really been unshaken. They fared far better than did the plaintiff, Merita and the second defendant. One cannot reject the evidence of a servant simply because she is a servant. These people come from a very low stratum of society and are paid low wages, but for this consideration a master in Ceylon receives a service of a kind which is unsurpassed anywhere else in the world, and which employers accept as a matter of course till they have to do without it. No doubt when they break something, in order to avoid being punished they may prevaricate,

No. 39
Judgment
of the
District
Court
27-2-43
—continued.

but servants as a class in Ceylon are loyal to their employers and one can understand why they made no complaint even to Mr. Alles when he came to the bungalow in April and stayed alone for a few days. After all, why should they complain when there was Merita in the house whose duty it was to complain? One can see their point of view—"If I told the master would we be believed?"

It is argued that the servants' evidence is too general and that therefore they cannot be tested with regard to specific facts. That is true, but servants do not keep diaries or note books. They can only give general evidence. It will be seen that when we come to the second Colombo 10 incident the servant Pabilis gives evidence of a specific instance with which I shall deal at the proper time. It is alleged that the evidence of the servants is easy to fabricate. But if the evidence was fabricated would not an attempt have been made to make them speak in greater detail? It will be seen that most of the details they give were elicited in cross-examination and not in examination-in-chief. With regard to Alice it is argued that her story was only communicated to the first defendant by degrees. On the night of the 19th December, 1941, when he was leaving the house, she went up to the lorry in which the first defendant was carting away his effects and said to her master that she was not surprised that 20 things had come to such a pass. I can see nothing unusual in that. probably until the master was about to leave she did not realise what was happening, and she then ran up and spoke to the first defendant. It was neither the time nor the place to go into details. A few days later Alice on her way from marketing went to first defendant's mother's house to see the baby and told Mr. Alles "a little more", and on a later occasion she told him some more. We do not know the circumstances under which those statements were made and what prevented Alice from making a full statement. She may have been late with her marketing, or may have been anxious to get back home to cook a meal for the plaintiff who was 30 left behind at Merlton and could not delay. On the other hand, the first defendant realising that these women were still in the employ of his wife, may not have been prepared to have very much to do with them. We know how difficult it is to get a coherent story out of people of this class, and if left to themselves will probably not give either a complete or coherent account. It is a difficulty which counsel examining in chief and who refrains from putting leading questions has to face every day in the Courts.

It has been suggested that statements in writing from these servants had been taken and had those statements been produced, the plaintiff 40 and the 2nd defendant would be in a better position to contradict the servants' evidence. It is admitted that statements have been taken, but the dates when those statements were taken have not been disclosed, 1st defendant when asked in the witness box to produce those statements failed to do so. That is not the way to obtain discovery or inspection of documents. What I think happened was this—1st defendant is a lawyer and he knew that it was futile to come to Court without a case which his lawyers passed as a *prima facie* case. These servants or some of them

were under the influence of his wife, and the 1st defendant and his legal advisers therefore proceeded with care and caution. Other servants who had left their employment at Merlton had to be searched for. There is nothing improper in Mrs. Alles' (senior) driver being asked to go about and trace these people. By the time the man Pabilis was traced Alice and Joslin had made their statements, but I do not think their statements had been recorded. When the 1st defendant left the house he probably intended to file an action for constructive malicious desertion only, and on that footing he consulted lawyers and interviewed counsel. Then evidence of another sort began to trickle through and this made the 1st defendant and those advising him hold their hands. Then came the question as to whether the child the plaintiff was about to give birth to was 1st defendant's child or not, and we have 1st defendant's statement that on the advice of Mr. H. V. Perera, K.C., and Mr. E. G. Wickremanayake it was decided to wait until the child was born. I am unable to draw an adverse inference against the 1st defendant by reason of the way in which these witnesses were discovered or their statements recorded. It has been made a matter of comment that if the servants' evidence is true and Merita's evidence is false, there must be evidence available in Colombo of somebody who had seen the plaintiff and the 1st defendant out at night alone, because plaintiff's case is that she and the 1st defendant never went out without Merita, whereas the servants in relation to the second alleged adultery at Colombo say that this was a frequent occurrence. I think the 1st defendant should have been in a position to lead such evidence. For example, Mr. & Mrs. Namasivayam, who were in Colombo at this period and who frequented the same dances and promenade concerts might have seen plaintiff and the 2nd defendant together at night. There would also be persons like the door-keeper at the Galle Face Hotel or the Grand Oriental Hotel who might be in a position to say that he has seen the plaintiff and the 2nd defendant out together alone at night. But as against this there is the evidence showing that plaintiff's father Mr. Paul de Costa had objected to the plaintiff's association with the 2nd defendant. Paul de Costa is the father of both plaintiff and Merita. Merita was staying at Merlton. So if it is true that plaintiff never went out alone with the 2nd defendant unaccompanied by Merita, why should Paul de Costa object to his *married* daughter's association with the 2nd defendant more than to the association of his *unmarried* daughter with the 2nd defendant? His objections can only mean that plaintiff and 2nd defendant were going about together alone, and that the father objected to it, and removed Merita from the house at the earliest opportunity.

It has been urged that Alice has contradicted herself—she stated that she had seen the 2nd defendant coming out of the room on three or four days. In another place she said that at night she has seen the 2nd defendant in the house sometimes four or five times a week, sometimes twice or thrice a week. But the witness has also stated clearly that the 2nd defendant only stayed at night after the lady came from Bandarawela. In regard to the earlier episode she has not stated that 2nd defendant ever stayed at night. I can see no contradiction.

No. 39
Judgment
of the
District
Court
27-2-48
—continued.

It is asked why these servants remained at Merlton while flagrant misconduct was going on in the house? The answer is that they were servants who were being well treated by the mistress, and therefore so long as their wages were paid, why should they leave? There is evidence that the plaintiff was sometimes in arrears in paying the wages. Knowing the financial circumstances of this family it is not impossible that this happened although the plaintiff denies it. This is another reason why the servants stayed on.

Having seen these witnesses and weighed all the circumstances and the probabilities, I find that the charge of misconduct at Merlton between 10 the 15th of February and 20th of March, 1942, has been established on evidence which is trustworthy.

Had the only evidence in this case been the two alleged adulterous incidents at Merlton, and had the case resolved itself to a contest on the one side between the evidence of domestic servants, and that of the plaintiff the 2nd defendant and Merita on the other, and there were no other circumstances, the Court might hesitate to base a finding of misconduct against people in the position of the 2nd defendant and this plaintiff. But that is not the case here. We cannot shut our eyes to the rest of the case and deal with the evidence as if it were contained in insulated compartments. For example, if we find independent evidence leading to the conclusion that the plaintiff and the 2nd defendant committed misconduct in Bandarawela at Mrs. Outschoorn's house, or at Mrs. Montague Jayewickreme's house, or at both places, the Court is entitled to regard that evidence as to some extent "corroborating" the *independent* evidence of the Colombo witnesses which I accept as true. The case must be looked at as a whole. I agree that if the Colombo evidence falls short of the proof required by law, or if the witnesses are unworthy of belief, the Court would not be justified in supplying gaps and defects in the Colombo evidence by falling back on other evidence from Bandarawela. We are 30 face to face with two conflicting stories, both of which cannot be true. Either Alice, Pabilis and Joslin are speaking what is true, or Merita, plaintiff and 2nd defendant are speaking what is true. Presently I shall give further reasons why I prefer the evidence of the servants.

On the 8th of March the 1st defendant wrote letter P10 to his wife saying that it was "terrible" after the plaintiff left Jaffna. He adds: "Sam (2nd defendant) has promised to come up so often and disappointed me that I am beginning to give up hope altogether". On 18-3-41 we have P33 from the 1st defendant in which he asks her before leaving for Bandarawela to "tell Sambo to be good enough to re-address my letters here 40 if I am staying on beyond Monday next. I shall write to him about my movements". According to the plaintiff on the 19th of March Miss Neydorf her aunt stayed at Merlton. On the 22nd of March plaintiff, Merita and Hortense went to Bandarawela to the boarding house of Mrs. Solomons where two rooms had been booked for them. It is important to note that right through their holiday the plaintiff, Merita and the baby Hortense slept in one bed. There were in fact two beds in the room placed side by

side against the wall making one large bed. In this bed the baby slept nearest the wall, plaintiff in the middle, *i.e.*, where the two beds came together, and Merita on the other edge. This has a material bearing on this case. Looking at the matter from the point of view of experience and probability, although the baby was not very broad, a mother would leave sufficient space between herself and the baby for fear of overlaying it while they were asleep. Therefore, the plaintiff who occupied the place where the two beds joined would be occupying an *uncomfortable position*. From the first day of their stay until the end of her holiday *plaintiff was*
10 *sleeping in an uncomfortable position.*

On the 5th of April, 1941, the 1st defendant writing from Jaffna to the plaintiff at Bandarawela informed her that he had to continue prosecuting after the Easter recess and he added "I thank God for this", proving that his finances were at a low ebb and that the acting pay of a Crown Counsel was in the nature of a God send to him. He refers to his arrangements regarding the Easter holidays, and says he would be leaving Jaffna by a certain train and that he would be in Colombo for the holidays, and he adds: "*If I get a car*, I will come up and see you in Bandarawela It looks as if I am going to be stuck here (Jaffna) for some time once
20 we begin after the vacation as there are some very heavy cases to be tried". The first defendant says in his evidence that the plaintiff informed him that there was no room available for him at Mrs. Solomons'. On 8-4-41 the Jaffna sessions closed for Easter and the first defendant came to Colombo. Reasons of finance and the inability to find accommodation at the Solomons' prevented first defendant from spending his short holiday with his wife. P12 proves that questions of finance was a serious matter for the first defendant. His railway ticket from Jaffna to Colombo would be expensive and so would a ticket from Colombo to Bandarawela. He was maintaining a house in Colombo where he had to keep a staff of
30 servants. He was paying for his wife and child and an ayah and possibly Merita for their holiday at Bandarawela. He was hopelessly in debt. One can therefore see the reason why he could not go to Bandarawela. Plaintiff was aware of it and acquiesced. P12 also shows that the first defendant was yearning for the society of his wife and child, but as there were practical difficulties in giving effect to that desire he made other arrangements to spend his brief Easter vacation with his friend, Superintendent Krishnaratne, who had been transferred to Ratnapura. On his arrival in Colombo he was driven to Ratnapura in a car by Mr. A. O. Weerasinghe, a Civil Servant.

40 First defendant arrived in Colombo on the 9th of April. It is suggested that the 2nd defendant met him at the station and was with him on the 9th and 10th. First defendant denies this. He says he reported at the Attorney-General's Office and Weerasinghe came in the evening and they left for Ratnapura at 5 or 6 p.m. on 9-4-41. He is certain he did not meet the second defendant. He denies he told the second defendant that he was going to Bandarawela. P33 shows that the first defendant was going to write to Samahin about his movements. The first defendant

No. 39
Judgment
of the
District
Court
27-2-43
—continued.

was only going to stay in Colombo for a very short time. He had made his arrangements and written to his wife. There was thus no necessity for the two defendants to meet.

According to the second defendant, on the 9th of April he went and met the first defendant and took him shopping on the 10th of April. 2nd defendant says that he told the first defendant that he was going to Bandarawela by train and the first defendant said he was going there by car. The 2nd defendant says he left Colombo on Maundy Thursday (10th April) by the night train having booked a room at Mrs. Outschoorn's boarding house. He says that on the 10th of April he and the first defendant went to the Bristol Hotel for drinks and then the latter expressed a desire to visit the Ludowykes at Dehiwala. Mr. Ludowyke is a clerk in Class II. of the Postal Clerical Service and is a Burgher gentleman, living at Dehiwala. They are a respectable family but are not people of the same social status of either the second defendant or the first defendant. The Ludowykes however were great friends of Dr. Samahin. He has been in the habit of accompanying the Ludowyke girls and their parents to dances at the Grand Oriental Hotel, etc. It is clear that the Ludowykes placed great value on their friendship with Samahin, which enabled them to meet people and to be introduced to young men whom they otherwise would not meet. It is an important thing for a clerk in Class II. of the Postal Clerical Service to be seen at places like the Grand Oriental Hotel and the Galle Face Hotel and elsewhere with Dr. Samahin, Anaesthetist of the General Hospital, and Mr. Stanley Alles, Acting Crown Counsel.

It is clear that the Ludowykes are under obligation to Dr. Samahin. It was through the friendship of Mr. Ludowyke had with Dr. Samahin that the Misses Ludowyke were able to attend these functions. Mr. Ludowyke is a man who has several daughters and it is not unnatural to suppose that he would like them to mix in good company. There is nothing wrong in such a desire. It was by joining forces with the parties taken to the dances by Samahin and Alles that these young ladies were able to meet other people of the same status. It is therefore clear, that the Ludowykes were under obligations to Samahin.

I find that Samahin did not meet the second defendant on this visit to Colombo at all. If the second defendant's evidence is true that he left Colombo by the night mail on the 10th of April, Maundy Thursday, he could only have reached Bandarawela on the morning of Good Friday (11th April). It will be seen that Mr. Gratiaen, counsel for the plaintiff, (whose case does not in any respect clash with that of the second defendant) in cross-examining the witness Babapulle asked the following question :—

“*I am instructed (i.e. by the plaintiff or her proctor) that Dr. Samahin was in Bandarawela on Maundy Thursday morning.*”

It is obvious that second defendant could not be at Bandarawela on 10th April unless he left Colombo on 9th April. Similarly Mr. J. E. M. Obeyesekere when cross-examining the first defendant proceeded on the assumption that his client's case was that he was at Bandarawela on the 10th of

April. It will be seen that Mr. Obeyesekere was suggesting to the first defendant that it was on the 9th of April that he and the second defendant "called at the house of a certain friend—a mutual friend" that is the Ludowykes. How can counsel suggest that it was on the 9th April the first and second defendants called on the Ludowykes, if as a matter of fact second defendant's case was that it was on the 10th? Mr. Obeyesekere at a later stage put this question to the first defendant "*I am instructed that you went shopping on the 9th—either on the 9th or the 10th you called at the Ludowykes*". It will be seen how the case for the second

10 defendant changed from the 9th to the 9th or the 10th. At a later stage of his cross-examination Mr. Obeyesekere stated that his instructions were that the second defendant called at the first defendant's house on the 9th morning when they lunched, shopped and went to the Ludowykes together.

The second defendant's evidence is that he had taken three days' casual leave. 1D10 is a certified copy of the leave register of Dr. Samahin. This shows he had taken one day's leave on the 29th of March, 1941; *one day's leave on the 10th of April, 1941*, and one day's leave on the 19th April, 1941. Would any man who has obtained one day's leave on Maundy Thursday wait till the night of that day to catch the train to Bandarawela?

20 Is it not more probable that he would take the night mail on the 9th of April so as to avail himself of the whole day on the 10th of April. It seems probable that Dr. Samahin was at Bandarawela on the 11th, 12th and 13th without leave.

Reliance has been placed on an answer given by the first defendant in his evidence. He said that when he met his wife and Dr. Samahin in the Bazaar at Bandarawela they told him that second defendant had arrived at Bandarawela "that morning", that is Good Friday the 11th April. If that be so, why was the witness Babapulle put the question: "*I am instructed that Dr. Samahin was in Bandarawela on Maundy*

30 *Thursday morning*", *i.e.* 10-4-41?

The exhibit 1D10 was produced as the result of an application by the first defendant on 2-10-42 for a summons on the Director of Medical & Sanitary Services to furnish him with a true statement of the periods of leave taken by Dr. Samahin from 1-3-41 to 31-7-42. In open Court that application was allowed—see journal entry. Therefore before this trial started Dr. Samahin's lawyers knew or should have known of this application and should have been prepared. We now know that this doctor was at Bandarawela on 11th, 12th and 13th April, but so far as 1D10 goes, which is a certified copy and a public document issued by a public officer

40 who has certified it as being correct, Dr. Samahin had only taken one day's leave on 10th April. There is no evidence that the same rules which govern other Public Servants in regard to their being absent from their stations on public holidays apply to doctors and anaesthetists like Dr. Samahin who may at any time, even on a public holiday, be summoned for duty at the General Hospital. 10-4-41 was Maundy Thursday and a public holiday, and the fact that Dr. Samahin had to apply for one day's leave on Maundy Thursday indicates that he could not be absent from

No. 89
 Judgment
 of the
 District
 Court
 27-2-43
 —continued.

Colombo on Good Friday, Holy Saturday and Easter Sunday without leave. According to the second defendant he was in Colombo with Mr. Alles on the 10th of April shopping with him, and having drinks with him at the Bristol Hotel. They then paid a visit to the Ludowykes at Dehiwala where the first defendant divided the kottakelungus which he had brought from Jaffna between the Ludowykes and Dr. Samahin and in turn was invited by the Ludowykes to stay to lunch and partake of crab curry. The time has been fixed as being between 11-30 and 12 p.m. I have no hesitation in holding, and all the probabilities show, that the second defendant was not in Colombo on the 10th of April, that he caught the night 10 mail on Wednesday night the 9th of April and was in Bandarawela on the morning of Maundy Thursday the 10th April.

It really does not matter to the main issues of this case whether the first defendant and second defendant were together on the 9th or 10th April. This evidence is important because it affects the credit of the witness Miss Ludowyke and to some extent that of Noel de Costa.

Miss Iris Ludowyke has sworn that somewhere between 11-30 a.m. and midday on Maundy Thursday, the 10th April, the two defendants called at their house, when the first defendant distributed kottakelungu from Jaffna and was invited to partake of crab curry. It was suggested 20 that she was making a mistake in the date but she is quite positive and definite, and has given various reasons for fixing the date and time—namely that her father, who is a post office clerk was at home on that day, that they had been to church, and they were having crab curry on Thursday because the next day was Good Friday when they would have to fast. She has no particular reason for remembering the date.

It is quite clear from Miss Ludowyke's evidence that her father and she had attended consultations and been in contact with Dr. Samahin and his lawyers in regard to this case. She is obviously a material witness for one side or the other. She tripped with regard to the date on which 30 summons in this case was served on her. The summons is filed of record and shows that summons was served on her in the Fort so far back as on 17-12-42. She admits she had never been served with a summons before but under cross-examination she stated that she had received the summons only three days before she gave evidence, which is not correct. She has tripped on other matters too.

If the story which Miss Ludowyke now tells about the invitation to lunch and partake of crab curry on Maundy Thursday is true that fact would not have been withheld from the lawyers of the 2nd defendant. It was the fact by which this young lady fixes the date, and yet no questions 40 about the crab curry, kottakelungus, etc., were put to the 1st defendant when he was being cross-examined. Why was he not asked whether he was invited to lunch at the Ludowykes and his memory refreshed by the suggestion that one of the inducements held out by the Ludowykes why he should stay to lunch was that there would be crab curry to which the 1st defendant was partial? The only inference to be drawn is that at the time 1st defendant was cross-examined this story about the crab curry

had not been disclosed to the legal advisers of the 1st defendant, either by Miss Ludowyke or by Dr. Samahin. The uncertainty in counsel's questions as to the date is also material.

With regard to the events of the 10th of April there is also the evidence of Noel de Costa, brother of the plaintiff. He left Merlton on the 10th of March, 1941. He wrote the letter P48A to Merita which bears no date but merely shows that it was written on a Thursday. He says "I think Stannie is back because I caught a *glimpse* of him as he *flashed past in a car with Samahin*". It is said that P48 is the envelope in which P48A was enclosed. The post-mark on P48 shows that it was received in the G. P. O., Colombo, at 3 p.m. on 10-4-41 which is Maundy Thursday. The notepaper of P48A is blue, the envelope is cream in colour. P48 and P48A were addressed to Merita de Costa and were therefore obtained from her custody, and should, therefore, have been formally produced by her. In a case in which questions were put on every conceivable point, no question was put to Merita on the documents P48 and P48A. Although Noel de Costa says he saw the 1st defendant flash past with the 2nd defendant, he cannot fix the date on which he saw them. All he can say is that he wrote the letter "soon after he saw Alles", and he adds that if he had seen the flashing past two or three days before writing the letter he "does not think" he would have mentioned it. The witness adds that he is drawing an inference that he must have seen Mr. Alles on the morning he wrote P48A because he had written the letter on that day, but he cannot vouch that it was on the 10th of April that he saw the flashing past, but he thinks it "might have been the 9th". It is peculiar that a man who is employed in the Government Service and who has to date his official correspondence, should in a letter written by him to his sister give a vague date like "Thursday" without putting the actual date. I accept the evidence that on Maundy Thursday Noel de Costa did write the letter P48A to his sister and that the letter was enclosed in the envelope P48 and that in that letter he stated he saw the two defendants flash past.

The evidence proves that while the 1st defendant was in Colombo on the 9th of April when he was going about Colombo in a car with Mr. Weerasinghe, the 2nd defendant was not in Colombo on the 10th. I think what happened was that Noel de Costa saw his brother-in-law flashing past him in a car and because the 1st defendant had been in the habit of using the car driven by the 2nd defendant, he assumed mistakenly that the other person in the car was the 2nd defendant whereas it was Mr. Weerasinghe. Noel de Costa is perfectly clear that he did not recognise the car. Therefore, assuming the genuineness of the letter P48A, I find that Noel de Costa did see his brother-in-law flash past in a car on 9-4-41 which he erroneously thought was driven by Samahin. It is common experience to see people one knows flashing past in motor cars, but is it possible to identify every occupant in such a car? There is nothing in P48A which compels me to find that either the 1st defendant or 2nd defendant were together in Colombo on Maundy Thursday the 10th of April.

No. 39
Judgment
of the
District
Court
27-2-43
—continued.

It is now necessary to consider the document 1D17. In order to discredit Miss Ludowyke when she swore that she saw the 1st and 2nd defendants together on Maundy Thursday, and in view of the 1st defendant's sworn evidence that he was in the Ratnapura District on that day in the company of Weerasinghe and Krishnaratne, the extract 1D17 was produced. It is a certified copy of the Pelmadulla resthouse book, where it is recorded that on the 10th of April, 1941, between 11-45 a.m. and 12-10 p.m. the following party were at the Pelmadulla resthouse—" Mr. & Mrs. P. R. Krishnaratne; Miss and Master Krishnaratne; Mr. A. O. Weerasinghe; Mr. S. Alles ". Obviously, if that document is admissible 10 it is clear that Miss Ludowyke has been giving untrue evidence, and that Mr. Noel de Costa is mistaken about the two defendants flashing past him on the 10th of April, because Pelmadulla and Colombo are so distant that it is impossible for a man to be in the two places between 11-30 a.m. and midday on the same day unless he used a plane. It is important to note what happened when 1D17 was produced by counsel for the 1st defendant at the very end of Miss Ludowyke's cross-examination. No objection was taken when the document was marked and put in as an exhibit by either counsel. The exhibit was duly put to Miss Ludowyke, but when Mr. J. E. M. Obeyesekere started re-examination of Miss Ludowyke he made 20 the following statement :—

" Mr. Obeyesekere *wants me to send for the original* of 1D17. I see no reason why I should do so. It is for the parties to summon witnesses. *Mr. Obeyesekere wants a summons on the Chairman, Provincial Road Committee to produce the original. Application allowed. Mr. Wickremanayake says he consents to the application.*"

What that means is that Mr. Obeyesekere, *while not objecting to 1D17*, desired to examine the original so as to compare one with the other. No question as to the admissibility of 1D17 as an exhibit was raised at the time when objection should have been taken, viz., when the document 30 was produced and marked. I do not know whether it is recorded, but at a later date Mr. J. E. M. Obeyesekere from his place at the Bar with reference to 1D17 stated that his proctor was making " certain investigations " but the case of the 2nd defendant was closed without the production of the original visitors' book of the Pelmadulla resthouse. For the first time, however, in the closing speeches counsel objected to the admissibility of 1D17 as a matter of law. Mr. Wickremanayake thereupon, urging with some force that the procedure adopted was unfair to him, and that if he had been given the opportunity, he himself would have produced the original and that he did not do so because he expected the 2nd de- 40 fendant to do so, moved for a summons for the production of the original. The order I made on that occasion will be found in the record. I directed that the book should be sent for, inspected by the legal advisers of the parties and then sealed by the Secretary in their presence so that it should be available for inspection hereafter if it became necessary so to do. I understand the document has now been sent to this Court but, of course, I have not seen it.

I am of opinion that the procedure adopted by the plaintiff and the 2nd defendant is unfair. A party cannot be allowed to lull his opponent into a sense of security without objection to the admissibility of a document at the time when objection should be taken, and, thereafter, when it is realised what the effect of the document is, to object to what has been admitted without objection. The law on this point appears to be plain. Section 114 of the Civil Procedure Code says that no document shall be placed on record unless it has been proved or admitted in accordance with the law of evidence for the time being in force. Section 154 of the Civil Procedure Code provides that a document must be formally tendered by the party in the course of proving his case at the time that its contents or purport are first immediately spoken to by a witness. The explanation to the section provides :

“ If the opposing party does not on the document being tendered in evidence object to its being received, and the document is not such as is forbidden by law to be received in evidence, the Court should admit it.”

I agree that a resthouse visitors' book is not a “ public document ” within the meaning of section 74 of the Evidence Ordinance but Ordinance No. 12 of 1864 (Chap. 12) however contains the following preamble :—

20 “ Whereas much inconvenience is experienced from the practice which is now common of summoning public officers to produce in evidence books and documents in their custody, it is enacted as follows.”

The Pelmadulla resthouse is under the charge of the Chairman of the Provincial Road Committee, who, is either a Government Agent or an Assistant Government Agent. The resthouse visitors' book is therefore a book which is under the custody and control of a public officer and, therefore, comes within the documents referred to in Chap. 12. If the original was required a summons could have issued on the Government Agent. An order to that effect was made by the Court but ignored by the party who asked for it. As I read Ordinance No. 12 of 1864 it is independent of and supplementary to section 74 of the Evidence Ordinance, The enacting section provides :

40 “ Whenever it shall be necessary for any person to adduce proof in any Court of Justice..... evidence of the contents of *any book* or document in any public office, *or in the charge of any public officer*, he shall only produce a copy or extract therefrom, signed and certified by the officer to whose custody the original is entrusted, and such copy or extract shall be admissible in evidence in such Court..... in place of the original.”

There is also the provision which vests a discretion in the Judge to direct that the original should be produced. Had objection been taken when 1D17 was tendered that the original should be produced, I would at once have directed accordingly, and within twenty-four hours the book would have been available. 1D17 has been examined and found to be correct by the Chief Clerk of the Provincial Road Committee and certified as a

No. 89
Judgment
of the
District
Court
27-2-43
continued.

true extract "for the Chairman, Provincial Road Committee, Sabaragamuwa, Ratnapura". In my opinion this document falls within the ambit of section 1 of Chap. 12, even though it is not a public document under section 74 of the Evidence Ordinance. But assuming that the certified copy 1D17 is not admissible under Ordinance No. 12 of 1864, can a party be allowed to waive his objections at the time he should have raised them, and be allowed thereafter to object to what has been admitted without objection? The law on the point is quite clear. In 18 N. L. R. 85, Pereira and de Sampayo, JJ. held that in a civil action when a document tendered in evidence by one party is not objected to by the other, 10 it is to be *deemed to constitute legally admissible evidence as against the party who is sought to be affected by it*. Pereira, J. said: "It would be manifestly unfair to a party who tenders a document in evidence if, after he has been lulled into security by the lack of objection by his opponent, he is suddenly required to meet for the first time in the Appellate Court objections to the receipt of the document in evidence". It would be equally too late to object after the cases on both sides have been closed and the closing speeches had begun. This case has been considered in so recent an authority as 42 New Law Reports 311 when Howard, C.J. and Keuneman, J. held following 18 New Law Reports 85 that where a deed had been 20 admitted in evidence without objection at the trial, *no objection that it has not been duly proved* could be entertained in appeal. I think that these are two authorities which I am bound to follow. Even if 1D17 is inadmissible in evidence without the original being produced, it has now become admissible because the plaintiff and the second defendant are estopped from raising the objection.

Reliance was placed on the case reported in 41 New Law Reports 351. In that case a doctor made use of statements contained in a hospital bed-head ticket which he had himself not made, in order to reconstruct events which had taken place in the hospital bearing on the competency of a 30 testator to make a will. The Supreme Court held that in the absence of the house physicians and nurses who made the entries, this procedure was open to objection. Nihill, J. raised the question whether a bed-head ticket was a public document within the meaning of section 74 of the Evidence Ordinance to justify its proof by the production of a certified copy, but he did not decide the point as it was unnecessary to do so. The applicability of Chapter 12 did not enter into the decision of that case. I do not think that case applies to the facts of this case.

Mr. Amerasekera addressed a novel objection to 1D17. In order to prove that Mr. Alles was at Jaffna during certain periods the resthouse- 40 keeper of Jaffna was called. He brought with him into the witness box the original resthouse registers and a certified copy therefrom was marked 1D1 without objection. The resthouse-keeper was told he could go back to Jaffna taking his registers with him. No criticism was made in regard to 1D1 while the resthouse-keeper was in the witness box. In his closing speech, however, Mr. Amerasekera pointed out that there are certain discrepancies in the certified copy 1D1. For example, according to 1D1

Alles was not in the Jaffna resthouse between the 1st of April and the 20th of April. 1D1 also shows that he left the resthouse at 7 a.m. on 1-5 and arrived on 1-5 at 6 a.m. and it is asked how a man can leave a resthouse on 1-5 at 7 a.m. and return to the resthouse at 6 a.m. ? It is also pointed out that while admittedly the 1st defendant was in Colombo on the 9th of August, he is shown as being at the Jaffna resthouse between 1-8 and 21-8. It is therefore argued that because the certified copy of the Jaffna resthouse book is wrong, therefore 1D17 must be equally wrong. I think there are objections to this line of reasoning. In the first place none of
 10 these questions were put either to the resthouse-keeper of Jaffna or to Mr. Alles. The resthouse-keeper was in the witness box with his original books before him, and had he been questioned there may have been an explanation forthcoming for what apparently are inconsistent entries regarding uncontested facts. In the second place, granting that the Jaffna resthouse register is wrong, how does it prove that the Pelmadulla resthouse register is wrong ? I hold that 1D17 is admissible. I have given my reasons independently of 1D17 for coming to the conclusion that Miss Ludowyke is not a witness of truth in regard to what she says happened on the 10th of April. If 1D17 is admissible it demolishes her credit as it
 20 proves that she has committed perjury in the witness box.

On the question whether the second defendant arrived at Bandarawela on the morning of Maundy Thursday 10th April, or Good Friday the 11th April there is another witness who should be in a position to throw light on the matter, namely, Mrs. Outschoorn, the keeper of the boarding house in which Dr. Samahin stayed. It has been elicited that Mr. Outschoorn was a school friend of Mr. Paul de Costa the father of the plaintiff. I have reason to doubt the truth of many things which Mrs. Outschoorn said in the witness box. She stated that although she runs a boarding house she keeps no books. That is something I cannot believe. It is no
 30 doubt true that a boarding house is not like an hotel, but one has the right to assume that boarding house keepers not being philanthropists, try to run their business for profit. It is no doubt true that in a place like Bandarawela there are certain off-seasons when there are hardly any visitors, but even so, unless Mrs. Outschoorn kept some kind of books she could not know whether her business was being run at a loss or a profit—for example, she has to pay the bills of the butcher and the baker. She has to meet shop, bread and dhoby's bills, besides paying for the household marketing all of which have to be set off against the income derived from the visitors. She must keep accounts and tender bills to her visitors
 40 who may order extras, and bring guests for whom extra meals have to be supplied. It therefore follows that unless Mrs. Outschoorn maintains some kind of books she could not run her establishment at all. If she kept books there would appear in them the dates on which her visitors arrived and left, and we would be able to ascertain with precision when Dr. Samahin turned up. Where, is the letter by which Samahin booked his room ? I find that her evidence that she does not keep books is untrue, and is given to help the plaintiff owing to the friendship the Outschoorns have for Mr. Paul de Costa and also to avoid her house getting

No. 89
 Judgment
 of the
 District
 Court
 27-2-48
 —continued.

a bad name. One of the acts of adultery alleged is said to have been committed in her boarding house. It is obvious that Mrs. Outschoorn would therefore be anxious to avoid a finding to that effect by this Court. She has also been guilty of a lack of frankness. In the witness box she was shown a sketch of her bungalow and asked to locate her room which she did definitely, but later she changed its location and gave as her excuse for the mistake that she had left her spectacles behind. If anybody knows the geography of her house it is the mistress, and it is strange that she should make the mistake. The nature of her bias is indicated by the ludicrous nature of some of the evidence she has given. The witness Babapulle stated that he saw the plaintiff enter Dr. Samahin's room on a certain night when he and some others were playing a game of rummy after dinner at the dining room table. Mrs. Outschoorn says that such a thing is impossible, because it is a rule of her establishment, which is more inflexible than the laws of the Medes and Persians, that nobody is allowed to play cards on her polished dinning room table. She admits that dinner is served on this table without a table cloth. Surely some of her guests might accidentally splash his soup and stain the glossy surface of this table? Is it likely that a boarding house keeper would irritate a guest who decides to play cards after dinner at the dining room table by 20 telling him not to do so because the table would lose its polish? I cannot believe that Mrs. Outschoorn would dare do such a thing and cause him to change over to another boarding house of which Bandarawela seems to be plentifully supplied. Mrs. Outschoorn has also taken upon herself to remember details about various incidents as to the movements of her guests on certain days when there is no reason at all why she should remember them apart from her books. For example, how can a boarding house keeper say at this date at what time a particular person came in to dinner or left the dinner table without there being some reason why she should remember it? Yet she has given details of such incidents; but 30 when her memory was tested on other matters it was found that the things she could not remember outnumbered the facts which she could. For example, while she is very clear about the movements of Dr. Samahin and Mr. Babapulle, she cannot remember when Mr. M. L. M. Salgado came to her establishment. All she can say is it was "somewhere in April". She cannot say when he left. All she can say is that it was "somewhere after Easter". She cannot say when Miss Bartholomews patronised her establishment, etc. She has stated that Babapulle was there for one day and one night whereas Babapulle says he was there three or four days. Her books would have shown all these facts. Having seen the witness 40 and considered her evidence in the light of all the circumstances and probabilities I find that she is not a witness who can be trusted. Her story that nobody can enter her establishment at night unless she got up and put up the servant appears to be improbable. Bandarawela is a health resort and visitors at boarding houses go in and come out at all hours. There are dances, there are visits to be paid, there are moonlight walks. I cannot believe her statement that every time a guest comes in late she has to get out of bed to wake the servant whose duty it is to open the

front door. A busy woman like Mrs. Outschoorn whose time from early morning till she retires to bed would be fully occupied with household duties is unlikely to get up every time some visitor came home late, merely to awaken the servant and tell him to open the door. I cannot believe her statement that she would on each occasion look to see who it was that entered. Surely if an unusual person or a stranger arrived the servant would inform her of the fact. If it was a guest, why disturb the landlady?

No. 39
Judgment
of the
District
Court
27-2-43
—continued

The movements of the 2nd defendant on the 10th April are vague.
 10 There is no proof that any misconduct took place on Maundy Thursday the 10th April, 1941. On Good Friday the 11th April the plaintiff and the 2nd defendant met at the Club and the witness Perumal took them and Merita in his car to the bazaar to buy vegetables. It was while they were there that the 1st defendant driven by Weerasinghe arrived at Bandarawela from Ratnapura. The first defendant had been to Mrs. Solomons' boarding house played with the baby and having been told that his wife and Merita were in the town, came in search of them and met them in the bazaar. Husband and wife had a short conversation and then separated. The 1st defendant says, and I see no reason to disbelieve him, that on this
 20 day he was neither his own master nor was he properly dressed to invite anyone to an hotel for lunch. I cannot understand why the plaintiff did not invite him to lunch with her at Mrs. Solomons', particularly as the 2nd defendant had lunch with the plaintiff and Merita at the Solomons' that day, but I do not think anything turns on this. After lunch the 2nd defendant, plaintiff and Merita spent the afternoon at the Muttetuwegama's and in the afternoon a Major Fonseka stationed at the Diyatalawa Camp sent his car for them and the party spent the evening at the C. L. I. Officers' Mess at Diyatalawa. Later Major Fonseka's car brought them
 30 back to Bandarawela. The ladies got down at the Solomons' and Samahin went off to Mrs. Outschoorn's. There is no evidence of any misconduct having been committed on Good Friday.

The events of 12th April, 1941—Saturday—have to be examined in greater detail. It will be remembered that in the answer to the interrogatories Mr. Alles stated that his case was that misconduct was committed at the boarding house of Mrs. Outschoorn by day. The issue which has been framed and with which alone I am now concerned however reads as follows :—

6c. Did the plaintiff commit adultery with the 2nd defendant on several occasions between 10-4-41 and 14-4-41 at Bandarawela at the
 40 boarding house run by Mr. & Mrs. Outschoorn and elsewhere?

What were the movements of the plaintiff and 2nd defendant on the 12th April? There are no details as to how the parties spent the early part of this day. It is common ground that Major Stanley Fernando gave the plaintiff, the 2nd defendant and, I think, Merita a lift in his car to the Nuwara Eliya races from where they returned about 5 o'clock in the evening. The ladies had brought a change down to Bandarawela town because it had been arranged that the plaintiff, Merita, Perumal and the

No. 89
Judgment
of the
District
Court
27-2-48
—continued.

2nd defendant should go to the Bandarawela hotel dance that night, and that the ladies should change and dine at the house of Mrs. Montague Jayewickrema which is close to Mrs. Outschoorn's boarding house. It was also arranged that after the dance, instead of going to Mrs. Solomons' house which was far away, the plaintiff and Merita should sleep at the house of Mr. Montague Jayawickrema. At that time Errol Jayawickrema was not staying at Mrs. Montague Jayawickrema's house.

We are faced with a rather curious contradiction. The second defendant's evidence and the evidence of Mrs. Outschoorn and others is that the 2nd defendant having dressed for the dance dined that night at Mrs. 10 Outschoorn's house. He was then driven in Perumal's car to Mrs. Montague Jayewickrema's. If Mrs. Montague Jayewickrema is right, 2nd defendant had a second dinner with the ladies at Mrs. Jayewickrema's house. When Mrs. Jayewickrema gave that evidence its accuracy was not challenged by the 2nd defendant's counsel but it is possible that Mrs. Jayewickrema is making a mistake, although she appeared to be positive on the point. It is not likely that a doctor, and particularly a doctor who is going to a dance would risk indigestion by taking two dinners. From Mrs. Jayewickrema's house the party was driven to the Bandarawela Hotel in Perumal's car but they found the dance to be a "wash-out". Ban- 20 darawela is the centre of a tea planting district and at the Bandarawela Hotel dance there may have been a preponderance of Europeans and this party of Ceylonese may have felt somewhat out of place. One does not know exactly what happened to make the function "a wash-out". Be the reason what it may, this party found the atmosphere uncongenial and they did not wait till the end of the dance. The time when they left has not been fixed. All that the witnesses say is it was "about midnight". This is improbable. Why wait till midnight at a dance which was a "wash-out"? I hold that Dr. Samahin's party left the Bandarawela hotel much earlier than midnight. The 2nd defendant returned to Mrs. 30 Outschoorn's house, and plaintiff and Merita went back to Mrs. Jayewickrema's house. It is to be noted that Mrs. Jayewickrema, who is a disinterested witness, was not asked any question as to the time when the plaintiff and Merita returned to her house after this dance. She is the one person who could have given evidence on this point which neither side could have challenged. It will be seen that when plaintiff's counsel was questioning Mrs. Jayewickrema she was put the following question:—

"They went for the dance from your place and returned to your bungalow and slept? Yes."

Counsel did not follow up with the next question which he should have 40 put, namely: "At what time did plaintiff and Merita return to your house after the dance?" I do not think that omission was accidental. Counsel did not know what Mrs. Jayewickrema was going to say and did not wish to take a risk and so the matter was left at that.

It now becomes necessary to examine the evidence of Mr. Babapulle. This gentleman is totally unconnected with any of the parties to this action. At this date he was unknown to them. He was a casual visitor

at Mrs. Outschoorn's boarding house, being the guest of Mr. Outschoorn junior. He is a respectable man and is a Member of the Royal College of Veterinary Surgeons which is a high degree for a Vet. He appears to be a totally disinterested witness. He was discovered by accident. A few weeks after the 12th April Babapulle mentioned what he had seen to Mr. Cecil Abeyesundere. In the course of conversation Babapulle asked Abeyesundere what was wrong that people were talking about certain things meaning the gossip which was current about plaintiff and the 2nd defendant and told him what he had seen at Bandarawela. Thereafter Mrs. Reggie
 10 Alles came to him with a dog and elicited from him what he had seen. By that means the 1st defendant discovered Babapulle as a witness.

No. 39
 Judgment
 of the
 District
 Court
 27-2-43
 —continued.

He says that one night, the date of which he cannot fix, after dinner, he, Miss Outschoorn, Mr. Cameron and Mr. Waldo Perera were playing rummy at the dining room table at Mrs. Outschoorn's. The sketch P35 shows the scene. Mr. Babapulle is unable to fix the time but he says it was rather late because it was after dinner and the game of rummy was almost coming to an end and that shortly afterwards he went to bed. I would say that according to Babapulle's evidence the time would probably be somewhere between 10-30 and 11-30 or possibly even earlier. It would
 20 not have been "about midnight" or later. He says that while they were playing rummy, the plaintiff whom he had seen before in Colombo although not known to him, entered from the front verandah and saying "Good-night" to the rummy players opened the door of Dr. Ssmahin's room and went in. Just as the door was opened he caught a fleeting glimpse of a "gentleman" inside the room. He did not recognise the man but he observed that the lower part of his legs was bare. The incident made no impression on his mind at the time, and shortly afterwards he went to bed. But when later at Colombo he heard certain gossip, he recalled the incident, and hence the conversation with Cecil Abeyesundera which
 30 led to the visit of Mrs. Reggie Alles.

Mr. Schokman who was staying at Outschoorn's house has been called. He says that on the Saturday night he did not see anybody playing cards while he was about the place. I do not see how Schokman at this date can remember whether anybody played cards or not on the 12th April, 1941. It is possible that a game of rummy might have been played without Schokman being aware of it. If Schokman's memory is to be relied on, he had gone out for a walk after dinner on this night. We do not know at what time he went for his walk or at what time he returned.¹ All he can say is that while he was in the Outschoorn's house he saw no cards
 40 being played. I do not think Schokman's evidence in any way affects the evidence of Babapulle. Mrs. Outschoorn takes it upon herself to say that Samahin returned about midnight. I have already dealt with her defective memory and the improbability of her being awakened every time a guest returned from a walk or a dance. She says that on the Saturday night there was a rap at the door and she had to get up and put the servant up and saw 2nd defendant come in. I cannot accept her evidence.

No. 89
Judgment
of the
District
Court
27-2-43
—continued.

The witness Perumal says that they stayed at the hotel till about 12 o'clock and they left early because Samahin said he was not well. This is the first time we hear about the 2nd defendant being unwell. He has not said anything of the kind. I am unable to accept that evidence. If Dr. Samahin was ill and the dance was a "wash-out" why wait until midnight?

It will be seen that questions were put to Babapulle in cross-examination to suggest that the lady he saw entering this room was not the plaintiff but her sister Merita, *e.g.* :

"Q. Had you met Mrs. Alles before? A. I have seen her 10 before.

Q. *You have seen her sister before?* A. No.

Q. Have you never seen her up to date? A. I do not know she had a sister at all.

(To Court: Q. *Do you think you made a mistake?* A. No.)

Q. Where did you meet Mrs. Alles? A. I have seen her before in Colombo.

Q. Frequently? A. Once or twice before.

Q. *Do you know she has a sister who is not unlike her?* A. No.

Q. Are you aware that she has a sister who is very well known to 20 Miss Outschoorn? A. No."

What is the relevancy of these questions unless they were intended to suggest that it was Miss Merita de Costa, a friend of Miss Outschoorn, who came that night to the Outschoorn's house and that Babapulle had mistaken one sister for the other. At the end of the witness' evidence the Court put the following question to the witness:—

"Q. It has been suggested that you mistook the plaintiff for someone else? Have you any doubt about that? A. No.

(Mr. Gratiaen says he is not making the suggestion that it was Merita who went into the room on this occasion. His suggestion is 30 that Merita was frequently in the Outschoorn's house at this time.")

If so, why ask whether they resembled each other? I wish to record that Merita and the plaintiff are not alike, and cannot be mistaken one for the other.

It is suggested that there is no proof that there was a male in the room into which the plaintiff entered. Babapulle definitely says that it was a "gentleman" which disposes of that as well as of the further suggestion that it was a servant. These suggestions are beside the point. The question at issue is not that the plaintiff went into a room in which there was another woman or only a servant. The question is whether 40 the plaintiff did in fact go into the room at all? It was never put to Babapulle that the person he saw inside that room was another woman or servant. In Ceylon one does not describe a servant as a "gentleman." It is also suggested that Babapulle did not know which was Samahin's

room. The evidence is that when Babapulle turned up at the boarding house he was introduced to all the people staying there and he then got to know the room in which the various guests were located. There can be no compromising. Either Babapulle is a false witness or he is a truthful witness. Either the incident he describes never took place or it did. It is asked whether the plaintiff would boldly come in this way to a boarding house for an immoral purpose and risk detection or blackmail? That is an observation which is entitled to weight, but it is also possible that when passions are aroused the heart may dictate to the head. If the evidence is true the 2nd defendant, and the plaintiff had by this time thrown discretion to the winds.

A question which should have been put to Merita and Mrs. Montague Jayawickreme is whether after these ladies came to Mrs. Jayawickrema's bungalow that night, the plaintiff did or could have left the house. The case for the 1st defendant all along has been that Merita was well aware of the irregular relations existing between the plaintiff and the 2nd defendant. That the plaintiff knew the geography of Mrs. Outschoorn's house is clearly proved. According to the plaintiff she had never been to Outschoorn's house until long after this incident. The falsity of that assertion is proved by Mrs. Outschoorn who says that Merita frequently came to her house as she was a friend of Miss Outschoorn and that she used to leave about 6-45 p.m. It is in evidence that the Solomons' house is a considerable distance away from the Outschoorn house and that a young lady would not walk that distance unaccompanied. The evidence shows that on 16-4-41 Merita did not accompany plaintiff to the station as she did not care to walk back alone. The evidence also proves that the plaintiff and Merita used to come daily to the town together. Therefore even though the plaintiff may not have been a friend of the Outschoorns, it is incredible that when Merita was at the Outschoorn house the plaintiff did not go there to fetch her away and in so doing did not become familiar with the geography of the place. If the meeting was prearranged between plaintiff and Dr. Samahin he could have told her where his room was. Merita was not asked whether the plaintiff did leave Mrs. Jayawickrema's house that night or whether she could have done so without her knowledge.

In considering the credit to be attached to the evidence of Babapulle it is necessary to refer to the attempt that was made to discredit his evidence. Long after he had given evidence, it was alleged in open Court that Babapulle had agreed to give false evidence for the 2nd defendant on payment of a bribe of Rs. 500 which was paid by a cheque drawn by Mrs. Alles, Senior, on the 17th December, 1942 and cashed on the 19th December, 1942. It was stated that this information had been received after Babapulle had given evidence, from an unimpeachable source and the Court was requested in the interests of justice to allow the plaintiff to lead that evidence, and to recall the 1st defendant for further cross-examination. I allowed the application and the 1st defendant was recalled and denied the allegation. Thereupon application was made by

No. 39
Judgment
of the
District
Court
27-2-43
—continued.

the plaintiff to call Mrs. Alles (Senior). In the interests of justice this application also was allowed and Mrs. Alles (Senior) gave evidence. She denied the allegation, and while she was still in the witness box her cheque books were fetched from her house, so that no time was available to tamper with any document or fabricate any evidence. The cheques which this lady issued between 4-12-42 and 7-1-43 are summarised in the record. No cheque at all was issued by her on the 17th December, and no cheque for Rs. 500 has been issued between the two terminal dates. It was suggested that the cheque issued to a Mrs. Babapulle. There is no cheque issued to Mrs. Babapulle or to any Babapulle by this lady during these terminal dates. In spite of this cogent documentary proof, the allegation that Babapulle had been bribed was persisted in. Therefore on the following day Counsel for the 1st defendant produced an extract from the bank account of Mrs. Alles (Senior) which shows the cheques which had been cashed against her account. This is what happened when that document was produced.

“ Mr. Wickremanayake moves under the bankers’ books section to mark the statement of the Chartered Bank account of Mrs. Lavinia Alles showing the state of the account from 30th November up to date. 20

“ Mr. Jayawardena (Proctor) for the plaintiff has no objection.

“ Proctor for the 2nd defendant has no objection. It is marked 1D19.

“ Before I admit it let it be shown to the other side.

“ Mr. Amerasekera (Counsel for the plaintiff) now says that the document is unsigned.”

That is inaccurate because the document does bear the initials of an official of the bank. The record then reads :

“ Mr. Wickremanayake connects the document with the covering letter 1D20. 80

“ Mr. Amerasekera says he is not satisfied that 1D19 (mistakenly recorded as 1D14) is the document which accompanied 1D20.

“ I admit the document and note Mr. Amerasekera’s objection.

“ Mr. Wickremanayake further says that at the time his client had another cheque book from the Chartered Bank which has not been used and which is in Court which is handed to Mr. Jayawardena for the purposes of examination. He says this book was kept in readiness to be used when the current book is exhausted.

“ Mr. Jayawardena looks through the foils and counterfoils.”

“ The cheque book is handed back to Mr. Wickremanayake.” 40

If we have reached finality on any point in this case, it is that the suggestion that Mrs. Alles (Senior) issued a cheque for Rs. 500 in favour of a Mrs. Babapulle which was to be used as a bribe for the witness Babapulle has been conclusively demonstrated to be false. In spite of this, the allegation of a bribe having been paid to Mr. Babapulle was persisted in

and I refer to the following passage in plaintiff's evidence :

"Q. Before you made that allegation of a bribe did you try to find out whether he (Babapulle) was a well-to-do man? A. No.

"Q. You did not bother? A. No.

"Q. You thought it was perfectly alright without finding out his means to make that suggestion? A. Yes.

"Q. Are you still making that suggestion? A. Yes.

"Q. You still say he has given false evidence because your mother-in-law gave him a bribe? A. Yes.

10 "Q. And that in spite of the fact that all the counterfoils and her bank statement were produced in Court? A. Yes."

In the light of this evidence no merit attaches to the public apology which plaintiff's counsel made in open Court when the proof on both sides was closed which has been recorded as follows :

20 "Before Mr. Ameresekere closes his case he says with regard to the Chartered Bank cheque he finds *that the information which his proctor had received is not correct*. He says the information was received from a professional gentleman, who was a witness in this case and whom he had asked to be in attendance so that the Court may permit counsel to call him to show that he made that statement. He says he has sent two messages and a car, but as he is a doctor he is not available. He states he makes this statement *and expresses regret to Mrs. Alles (that is Mrs. Alles senior) and to Dr. Babapulle. He says it was a pure mistake on his part* and that he acted on *bona fide* information. He says he had not searched the bank before he made the statement.....Mr. Amerasekera says it is a *bona fide* mistake made on information given by a gentleman who was prepared to come but he is not available at the moment."

I have no hesitation in holding that Mr. Babapulle is a truthful witness.
 30 I also hold that he did see the plaintiff entering Dr. Samahin's room late at night, although he is unable to fix the date. Either the incident took place or it did not. If it took place *it is unexplained*, and the only inference is that the parties came together that night to commit misconduct. They had been to the dance which had been an unsatisfactory function. The parties gave way to the temptation created by the opportunity which placed the 2nd defendant in close proximity to the plaintiff at the house of Mrs. Outschoorn and Mrs. Montague Jayawickrema respectively. It was not possible for the 2nd defendant to visit the plaintiff at Mrs. Montague Jayawickrema's house. The parties hoped that every one at
 40 Mrs. Outschoorn's house had gone to bed, but they were prepared to take the risk. I can find no parallel between the facts of this case and those in Ross' case. This is something more than a mere interview between two people at an hotel, or of two persons being thrown into an environment which gives an opportunity to commit misconduct. It is something much more than that. I find that the date of the incident is the night

of the 12th April. Applying the law to these facts I hold that this evidence goes far beyond that of mere suspicion or opportunity. It proves misconduct, in the absence of any other explanation from the parties concerned *e.g.* that the plaintiff visited the 2nd defendant as a medical man or to take back her purse which she entrusted to him and failed to get back, or some such reason.

With regard to the 13th April, 1941—Easter day—there is no proof that any misconduct was committed on that date. The parties met as usual, and in the evening the ladies went to the Railway Station to see Dr. Samahin off. There is a suggestion that he did not leave on Easter 10 day, but I see no reason to disbelieve the evidence that he did leave on Easter Sunday evening because the register 2D4 shows that he was back at work on the 14th April. What the evidence shows is that he had left Colombo without leave on the 11th, 12th and 13th of April.

On the 14th of April, 1941 (Easter Monday) which is a public holiday Mr. Alles was still at Colombo. The 2nd defendant reached Colombo from Bandarawela on the morning of that day. The 1st defendant says he found a letter left at Merlton from his wife which the 2nd defendant had brought with him from Bandarawela. The 2nd defendant denies that he brought such a letter. The plaintiff also denies writing such a 20 letter. This is a small fact which does not affect the decision of the case, but the probabilities are that a wife knowing that her husband was in Colombo, would take the opportunity of writing a note to her husband and send it by the 2nd defendant. What was there wrong in doing so?

The 17th of April, 1941 was the birthday of the 1st defendant. The nature of the 1st defendant is shown in that although his wife was at Bandarawela and he was alone at Colombo and though his means would not justify any unnecessary expenditure, especially as he was running two establishments at the time, he nevertheless decided to give a birthday party at Merlton. It is said that this question of the birthday was dis- 30 cussed between husband and wife on the 11th April at Bandarawela. On the 16th of April the plaintiff wired to her husband intimating that she intended coming down to Colombo with Hortense to attend the birthday party and returning to Bandarawela on the 18th. This was a foolish thing to do when it is realized that she had decided to leave Bandarawela finally on the 20th of April. It is surely absurd that a mother should come down with a baby all the way from Bandarawela to Colombo merely to attend her husband's birthday party on the 17th and then return to Bandarawela with the baby on the 18th and thereafter leave Bandarawela again on the 20th? Plaintiff explains that the reason why she could not 40 leave Bandarawela for good on the 16th of April was because Merita had to play in a hockey match. Another reason is that Mr. Paul de Costa had arranged to send his car to fetch the two ladies and the baby to Colombo on the 20th because they had not sufficient money to settle the boarding house bills and pay for the railway tickets. I believe these explanations are true. The suggestion has been put forward that the reason why the plaintiff undertook this long and arduous journey to

Colombo and back is because she wanted to see the 2nd defendant. It has also been suggested that the plaintiff either wired to the 2nd defendant or telephoned to him. This is denied. I am unable to agree with these suggestions. Assuming that the plaintiff was pining for the 2nd defendant, her coming to Colombo and meeting him in the presence of her husband would have done her no good. Any misconduct between the two people at Colombo under the eyes of the husband as it were is unthinkable. I think the truth is that the plaintiff, who like her husband is very fond of pleasure, saw no reason why he should give a birthday party without her being present to act as hostess. The same trait emerges later when she saw no reason why Alles should go to a dance while she remained at home. It is also possible that her conscience pricked her, and that she thought it right and proper that she and the baby should be in the house when her husband was celebrating his natal day. The evidence does not, in my opinion, justify the inference that she came down to Colombo with any ulterior motive or intention of committing misconduct.

No. 39
Judgment
of the
District
Court
27-2-43
—continued.

When Mr. Alles received his wife's wire he telegraphed back telling her not to come. In spite of that the plaintiff and Hortense, travelling second class as they could not afford first class fare, left Bandarawela on the 16th of April and arrived in Colombo on the 17th. There is an apparent contradiction between the evidence of the plaintiff and Merita at this point. According to the plaintiff, she would have acted upon her husband's wire only it was too late to alter arrangements as she received the telegram at the station as the train left. She says the telegram was sent to her by Mrs. Solomons to the station. According to Merita, she did not accompany her sister to the station as she could not walk back alone. The telegram reached her at Mrs. Solomons' boarding house and was sent to the station. I do not think there is any contradiction between the evidence of the two sisters on this point.

On the 17th of April a largely attended party was held at Merlton. All the friends of the Alleses were there. The only absentees were Mr. Alles' relatives. Mr. Namasivayam who was at that party conceived the idea that a party should be formed to go all the way from Colombo to attend the Nuwara Eliya tennis dance at the Grand Hotel on the 19th April, 1941. To a set of people whose chief object in life was excitement and pleasure, this suggestion appeared to be a brilliant one and was received with acclamation. It was decided, the 1st defendant agreeing, that the following party should go to Nuwara Eliya *via* Bandarawela in Namasivayam's car :—Mr. Namasivayam, the plaintiff, Dr. Samahin and Miss Ludowyke who was at the birthday party. It was also arranged that Merita should join the party at Bandarawela. After the dance they were to return to Colombo in Namasivayam's car. In making these arrangements everybody lost sight of the baby Hortense, who had been brought to Colombo without her ayah and who would now be left stranded at Colombo while her mother was dancing at Nuwara Eliya and her father was leaving for Jaffna. Mr. and Mrs. Ludowyke appear to have objected to their daughter going on this jaunt. She is a young unmarried girl

No. 39
Judgment
of the
District
Court
27-2-43
—continued.

of 17 and had never been away from home before this. The Ludowykes naturally did not like to allow their daughter to go on such a long journey involving an absence of two nights away from home. *Thereupon the plaintiff undertook personally to chaperone Miss Ludowyke.* It was thought that accommodation at the Solomons' boarding house might not be available for her. Therefore the plaintiff despatched a telegram to Mrs. Montague Jayewickrema requesting that arrangements should be made to provide dinner and sleeping accommodation for two persons whose sex was not specified in the wire. The arrangement which Mr. Alles approved of was that the plaintiff and Miss Ludowyke should stay together on the 10 night of the 18th April at Mrs. Jayewickrema's. Mr. Namasivayam and Dr. Samahin were to make their own arrangements. Mr. and Mrs. Ludowyke consented under these conditions to allow their young daughter to leave on this long journey. The party then broke up having arranged to leave Colombo in Namasivayam's car on the following afternoon. I feel certain that Mr. Alles would not have approved of the plaintiff and Dr. Samahin staying at Mrs. Jayewickrema's, and I think the Ludowykes too would have objected had they known that their daughter would be separated from the plaintiff *at night.*

When the Alleses went to bed that night the problem of the baby 20 struck them. In the arrangements regarding her own pleasure, the plaintiff had overlooked the problem of Hortense. Husband and wife then agreed that the best thing to do in the circumstances was that as 1st defendant had to attend office and also leave for Jaffna, he should on the following day take Hortense to Mrs. Namasivayam who was not going to the Nuwara Eliya dance, and leave the child there until the plaintiff returned on the 20th. The plaintiff not only agreed to this, but also agreed to Mr. Alles' further suggestion that as a recompense for looking after Hortense, he should take Mrs. Namasivayam out to dinner and a picture. This is further evidence that these people would, if possible, 30 extract the maximum pleasure and excitement out of any situation. A point to note is that the plaintiff, although she knew that her husband was partial to the company of Mrs. Namasivayam, acceded to these arrangements.

On the following day, therefore, Hortense was taken to Mrs. Namasivayam's house and Mr. Namasivayam and his party left Colombo in his car en route for Bandarawela.

We now know that the one condition on which Mr. and Mrs. Ludowyke allowed their daughter to go on this trip was not fulfilled. We know now that on this night while Miss Ludowyke slept at Mrs. Solomons' 40 boarding house with Merita, the plaintiff and the 2nd defendant occupied adjacent bed rooms with an inter-communicating door at Mrs. Jayewickrema's. This is the third charge of adultery made by the 1st defendant against his wife.

The questions arise as to when the original plan was departed from, and why it was departed from?

The plaintiff not having given evidence when her case was closed, obtained the advantage of giving evidence by way of rebuttal—that is to say after the 2nd defendant and his witnesses had given evidence. The 2nd defendant, therefore, was the first witness who gave evidence in regard to this incident.

No. 39
Judgment
of the
District
Court
27-2-43
—continued.

On the 15th of January, 1943 (Friday) when giving *evidence in chief* he gave the following evidence :—

“ Q. Was there any talk about the accommodation at Bandara-wela when you started? A. —

10 (To Court : Q. When you started did you know where you were going to sleep that night? A. No.)

Q. Well, how did you distribute yourselves at Bandarawela? A. We dropped Miss Ludowyke at the Solomons’.

Q. Do you know why that was done?

(Mr. Wickremanayake objects.)

Q. Tell us what happened? A. *There was a discussion in the car*, plaintiff wanted to take Miss Ludowyke to Jayewickrema’s place. As Miss Ludowyke did not know the Jayawickrema’s, in consequence of a discussion that took place, the car was stopped at Solomons’.

20 Q. And what happened? A. We dropped Mr. Namasivayam at Victor Dias’ and plaintiff and I went to Jayewickrema’s house for dinner.”

It will therefore be seen that without being led in any way and in examination-in-chief, the 2nd defendant stated (a) that the plan was altered while they were still on their journey, (b) that Miss Ludowyke began the conversation by saying that she did not know the Jayewickrema’s, (c) that there-upon a discussion took place in the car and the original plan was changed, and (d) that in consequence of the arrangement made in the car Miss Ludowyke was dropped at the Solomons’, and plaintiff and the 2nd de-
30 fendant went to the Jayewickrema’s for dinner. It is highly improbable, however, that Miss Ludowyke who was a guest and a young girl would initiate any such conversation. She did not appear to me to be a person who would take it upon herself to alter plans solemnly approved by her parents and which constituted the condition under which she was allowed to go on the trip. What did it matter to Miss Ludowyke in which strange house she stayed or slept that night? Two things are therefore clear from the evidence of the 2nd defendant (1) that his story that Miss Ludowyke initiated the conversation is highly improbable, and (2) that his
40 story was that the change of plan occurred in transit in the car. Mr. Namasivayam who was in the front seat may not have heard what was being discussed in the back seat by the plaintiff, 2nd defendant and Miss Ludowyke. Therefore, on Friday, the 15th of January, 1943, when giving evidence, the 2nd defendant without being led, definitely committed himself to the statement that the change of plan was initiated by Miss Ludowyke and took place in the car. But on Monday, 18-1-43, after a week-end had elapsed, the 2nd defendant, probably discovered that the evidence

No. 89
Judgment
of the
District
Court
27-2-43
—continued.

he gave regarding the change of plans was in conflict with the plaintiff's case on the point. On Monday therefore a subtle change occurs in his evidence. He was still under examination-in-chief. This is the evidence he gave on the point on Monday. He is referring to their arrival at Solomons' house :—

“Q. Did you get down from the car? A. Yes, but I did not go inside the house.

Q. Did Namasivayam get down? A. He was seated in the car.

Q. Do I understand you to say that the two ladies (plaintiff and Miss Ludowyke) went inside alone? A. Yes. They had to shout 10 for a boy to get a lantern because there are a number of steps to the house.

Q. What happened—who returned from Solomons' house? A. Only the plaintiff.

Q. Did the plaintiff tell you anything? A. Yes.

(In answer to me Mr. Ameresekere says the plaintiff will be a witness.)

Q. What? A. Plaintiff said that *Miss Lodowyke was reluctant to go to Mrs. Jayewickrema's as she did not know her, and as Merita was staying at Solomons' she preferred to stay with Merita because both of 20 them were about the same age.*”

If that evidence is compared with the evidence the witness gave on Friday the change in the story is clear. If as the witness said on Friday the change of plan occurred *in the car*, there was no necessity for the plaintiff to return to the car and tell Dr. Samahin that Miss Ludowyke preferred to sleep with her school friend Merita. Such a thing could happen only if the change of plan occurred after plaintiff and Miss Ludowyke had gone into Mrs. Solomons' house and met Merita. It will be seen when the plaintiff's evidence is considered, that Dr. Samahin was thus bringing his story into line with hers. At a later stage the 2nd defendant amplified his story 30 under cross-examination :

“Q. The ladies were to stay at Jayewickrema's according to the original arrangements? A. Yes.

Q. You say today that they went into the house and returned—Mrs. Alles alone returned? A. Yes.

Q. And Mrs. Alles told you that Miss Ludowyke was not willing to stay there? A. Yes.

Q. You first became aware of that when the plaintiff came and told you that? A. Yes.

(To Court : Q. She and you were going to stay at Jayewickrema's? 40 A. Yes.)

Q. There is some variation in the evidence you gave on the last occasion and today. You said it was in the car that the discussion took place and Miss Ludowyke said she could not stay there? A.—

(To Court : In the car you were in the back seat and if any discussion took place in the car it would be across you ? A. Yes.

Q. *Why this slight variation in your evidence ?* A. *No answer.*)

Q. It is suggested that during the week-end you have changed your evidence ? A. No, I deny that."

Counsel for the 2nd defendant was constrained to admit that there is a contradiction between the evidence given by his client on the Friday and on Monday, but he tried to trim down its effect by arguing it was a contradiction "on an immaterial point". I cannot agree. It is a contradiction on a material point and affects the credit of the witness.

The story of the plaintiff and Miss Ludowyke (who followed Dr. Samahin) is, not that there was any change of plan in the car, but that right up to the time the car halted at Mrs. Solomons' house, the intention of the parties was to adhere to the original arrangement, namely, that the plaintiff and Miss Ludowyke should sleep at Mrs. Jayewickrema's and that Namasivayam and Samahin should make their own arrangements. The explanation given for halting at the Solomons' boarding house is that it was done for four reasons :—

(a) To inform Merita that plaintiff had come by car and that it was unnecessary for her to go to the Bandarawela station next morning to meet plaintiff and Hortense.

(b) To inform Merita that she was to attend the Nuwara Eliya dance the next day.

(c) To give Merita some cakes and patties which her sister had brought from Mr. Alles' birthday party ; and

(d) Because to reach Mrs. Montague Jayewickrema's house one has to pass Mrs. Solomons' boarding house.

It is said that when the car stopped at the Solomons' boarding house there had been no change of plan, and that plaintiff and Miss Ludowyke when they alighted from the car intended, after giving Merita the cakes and messages, to proceed in the car to Mrs. Jayewickrema's bungalow. It is said, that when Merita saw Miss Ludowyke she persuaded the latter to stay at the Solomons' boarding house. Plaintiff says that it was then, and only then, that Miss Ludowyke expressed the desire that she would rather stay at the Solomons' than go to the house of a stranger.

I shall assume that the story told by the plaintiff, Merita, Miss Ludowyke and the 2nd defendant is the truth, and examine it in the light of probability. Assuming then that in order to gratify the whim of two girls, the plaintiff took upon herself to alter the solemn arrangements which she had made with the Ludowykes and her husband at Colombo in regard to her movements, and the care and custody of Miss Ludowyke, how does the story stand ? Even if Miss Ludowyke stayed that night in the bedroom occupied by Merita, why could not the plaintiff also sleep that night at the Solomons' ? What was the necessity for the plaintiff to go *alone* to sleep at Mrs. Jayewickrema's ? Plaintiff was leaving Ban-

No. 89
Judgment
of the
District
Court
27-2-43
—continued.

darawela for good on the 20th April. She was tired after a double journey to and from Colombo. She had all her packing to do, get her luggage conveyed to the station, make arrangements for sending the ayah Joslin to Colombo and pay her bills. All this had to be done before she left for the Nuwara Eliya dance on the following day, because she was not returning to Bandarawela. This change of plan would have been a great convenience to the plaintiff. I hold that any woman confronted with such a situation which made it unnecessary for her to go to Mrs. Jayewickrema's, would gladly have availed herself of this change of plan and either telephoned to Mrs. Montague Jayewickrema or sent a note by Mr. Namasi-10 vayam or Dr. Samahin who were still waiting in their car, apologising to Mrs. Jayewickrema and stating that she and her friend could not come to dinner and explained the reasons for the change of plan. The friendship which existed between the Jayewickremas and the plaintiff would have enabled the plaintiff to do so without giving offence. Mrs. Jayewickrema is a wealthy lady and a few extra spoonfuls of mulligatawny for dinner and a few extra cutlets which could be used for a meal on the following day would have caused her no inconvenience at all. The reason given by the plaintiff for not staying at Mrs. Solomons' that night is that three people could not *comfortably* sleep in the two beds placed side by side in 20 that bedroom. What the plaintiff overlooked is the fact that during the whole time she stayed at Bandarawela three people did sleep comfortably in the bed, and that the plaintiff on 18-4-41 would have been no more uncomfortable than she had been for weeks before that day. The place of Hortense would be taken by Miss Ludowyke. I have already dealt with this point fully. Therefore, the reason given by the plaintiff as to why she preferred to go and sleep alone at Mrs. Jayewickrema's is one which does not bear scrutiny. Furthermore, she made no inquiry from Mrs. Solomons as to whether there was a spare room available, or whether she could provide a mattress and a blanket on which one of the ladies 80 could have slept that night on the floor. I also refer to the evidence given by Merita when she was questioned about the space required by the baby in bed. She admitted that although Miss Ludowyke was not very bulky, she rolled about in bed a good deal. When challenged as to how she knew of the rolling propensities of Miss Ludowyke in bed, she explained that whenever Miss Ludowyke stayed at Merlton she and Miss Ludowyke occupied the same bed. I cannot believe this evidence. Is it seriously suggested that in a Colombo bungalow where spare beds were available that Merita and Miss Ludowyke occupied the same bed? This contradicts Miss Ludowyke's evidence that until this occasion she had never stayed 40 away from her father's house. I cannot accept Merita's evidence as being true.

We are thus face to face with unusual conduct on the part of the plaintiff. I hold that an ordinary woman, who has no motive for acting abnormally, faced with the situation which confronted the plaintiff on this night, would not have acted in the way she did. Why when she could have stayed at Mrs. Solomons' house did she go to Mrs. Jayewickrema's house? I will leave that question unanswered for the moment.

Let us now examine what the conduct of Dr. Samahin was on this night. Plaintiff having decided to sleep *alone* at Mrs. Jayewickrema's, joined the gentlemen in the car and informed them of the change of plan. At that time she did not know where Dr. Samahin was going to spend the night, and she did not care. Namasivayam was to sleep at Mr. Victor Dias', but we have not been told what plans Dr. Samahin had made for his accommodation on this night. What he did say is that he and the plaintiff were to stay at Mrs. Jayewickrema's. It is absurd to suggest that a man like Dr. Samahin would have come on this long journey with-

10 out sufficient funds. He had three places where he could have stayed that night. He might have gone with Namasivayam and asked for a night's lodging at Victor Dias'. He could have gone to Mrs. Outschoorn's boarding house and inquired if he could be put up there. If both these failed, he still could have obtained a room at the Bandarawela Hotel. He did none of these things. After Namasivayam had got down at Victor Dias', the 2nd defendant *uninvited* followed the plaintiff into Mrs. Jayewickrema's. Mrs. Jayewickrema had received a telegram from the plaintiff asking her to expect two persons (sex not specified) and so she said nothing. But she had expected two ladies because she had prepared beds for two

20 persons in one room. She, therefore, never expected the 2nd defendant to stay after dinner. The parties had some drinks and dinner. At this time Mrs. Jayewickrema, although she said nothing, waited for Dr. Samahin to go away. Naturally, a hostess would not tell even an unwanted guest that it is time he went. She left that to the good sense and the good taste of her visitors. Finding that Dr. Samahin was not disposed to leave, she went off to bed. This ought to have proved a sufficiently broad hint to any man that it was time for him to say good-night and retire, but the 2nd defendant stayed on. Mrs. Jayewickrema then told Errol that if the man was staying, a mattress from one of the beds in the

30 room prepared for the two ladies should be taken to the adjacent spare room and a bed prepared for him there. The sketch of Mrs. Jayewickrema's house is the exhibit 1D12. According to the plaintiff, she was as much surprised as Mrs. Jayewickrema when the 2nd defendant stayed on, but there was a time when Errol was superintending the preparation of the adjacent bedroom when she could have told the 2nd defendant or given him a hint that it was time he went away; but she did nothing of the kind. The plaintiff and the 2nd defendant were sufficient friends to make it possible for her by a word or some gesture to make it plain to him that he should go away. The 2nd defendant is a doctor, a man who

40 has been educated in England, and who probably possesses a doctor's tact and good sense, but he would or could not take the hint. Accordingly, the plaintiff slept in room F while Samahin occupied room J with an inter-communicating door between. Both the rooms J and F are served by one bathroom K which at that time was being used by Errol Jayewickrema.

Not only was the plaintiff's act in leaving Mrs. Solomons' house that night unusual conduct, but the 2nd defendant's act in remaining at Mrs. Jayewickrema's house, when viewed in the light of all the facts and cir-

No. 39
Judgment
of the
District
Court
27-2-43
—continued.

cumstances, is equally abnormal. What should have been the conduct of a man like the 2nd defendant, placed in the situation in which he was, even assuming that he had made no arrangements for his accommodation? I can understand his escorting the plaintiff to Mrs. Jayewickrema's house. I can even understand his staying unasked to dinner, but thereafter when his hostess left and went to bed, he should have excused himself and left the place. When people who are in their proper senses act abnormally, they must be actuated by some motive. The motive alleged here is that they acted in this manner to commit adultery. It is urged for the 1st defendant that when these people started from Colombo they had no 10 intention of committing misconduct. That is probably so, but when they realised that the opportunity could be created by a slight change of plan, they took advantage of it. It is argued that the evidence merely proves opportunity, and does not justify an inference of misconduct, simply because these persons occupied adjacent bedrooms with an inter-communicating door. I think the evidence goes beyond mere opportunity when the facts of the case which are accepted as true are viewed as a whole and in their perspective. I therefore find that on this night there is sufficient evidence which justifies me in finding that misconduct did take place. .

20

It appears that Mrs. Jayewickrema had told the plaintiff that she could use her lavatory and bathroom. Plaintiff knew the geography of the house, having stayed there before. It may be that the plaintiff performed her ablutions in Mrs. Jayewickrema's bathroom although that lady was asleep and did not hear it. That fact, however, does not prove that misconduct could not have taken place. Even a wife who has been married for 50 years would not perform her ablutions and other functions in the presence of her husband if it could be avoided. It is argued that because Mrs. Jayewickrema gave these people breakfast next morning and had them to lunch, and allowed Merita to take a snapshot, this shows 30 that no misconduct took place. I do not see how that follows. The evidence proves that Mrs. Jayewickrema had noted the impropriety of the 2nd defendant's presence and expressed her disapproval by going to bed before her guests; but as a hostess she could say nothing more. She gave the 2nd defendant time in which to go away and when he would not, she bowed to the inevitable and thought no more of the matter. The laws of hospitality and good breeding caused her to give these people breakfast on the following day. It was no business of hers. She may or she may not have suspected that misconduct took place, but I cannot infer from the mere fact that Mrs. Jayewickrema failed to reprimand them and gave 40 them breakfast and a lunch prove that no misconduct took place. The impression which Mrs. Jayewickrema created on my mind is that of a placid, inoffensive person, who, even though she knew she was being made a convenience of, would say nothing. It has been said that Mrs. Jayewickrema regarded Dr. Samahin as "a welcome guest". The answer to the question was elicited by means of a leading question:—

"Q. And when he came in the company of Mrs. Alles to your house, I take it he was a very welcome guest? A. Yes,

(To Court : Q. But did you expect him ? A. No.)

No. 39
Judgment
of the
District
Court
27-2-48
—continued.

Q. He (Errol) says you sat up expecting Dr. Samahin would leave ?
A. At the time I went to bed I did not know he was going to stay.

Q. You still expected him to go ? A. Yes.

Q. You were waiting up to give him the chance to go ? A. Yes.

Q. And having waited long enough you went, still expecting him to go ? A. Yes.

Q. In case he did not go away you had told Errol to make the
10 necessary arrangements ? A. Yes."

Errol's evidence on the point is as follows :—

" After dinner could you tell us what happened ? A. We sat out till about 10-30 or 11 p.m.

Q. Is that the normal time you retire ? A. No.

Q. Can you tell us why you sat out till so late ? A. We expected Dr. Samahin to leave Mrs. Alles and go away.

Q. Then ? A. My sister-in-law retired and asked me to make certain arrangements."

Those were the circumstances under which Dr. Samahin entered Mrs.
20 Jayewickrema's house as " a welcome guest ".

As to the length of time Mrs. Jayewickrema knew Dr. Samahin, her evidence is that before the 18th April, 1941, she had been introduced to Dr. Samahin once before—" a long time before that ". I think Mrs. Jayewickrema is probably making a mistake when she says that on the night of the 12th April Samahin had dinner at her house before going to the Bandarawela Hotel dance. It is unlikely that Dr. Samahin had two dinners that night, once at Mrs. Outschoorn's and once at Mrs. Jayewickrema's. If so the night of 18-4-41 is the first time Dr. Samahin paid a formal call at her house.

80 With regard to the events of this night, there is an item of evidence given by Miss Ludowyke which shows that she tripped. The story of the plaintiff and the 2nd defendant is that until Merita expressed a desire that Miss Ludowyke should sleep with her, the parties intended to abide by the original agreement, namely, that Miss Ludowyke and the plaintiff should sleep at Mrs. Jayewickrema's. Miss Ludowyke gave the following evidence on this point :—

" Q. From Colombo you went up to Bandarawela—where did you first stop ? A. We stopped for tea.

Q. At Bandarawela ? A. At Solomons'.

40 Q. What was the need to go there at all ? A. Why, I was going to stay there."

Miss Ludowyke was off her guard and quite voluntarily without any leading in effect stated, " The reason why we stopped at the Solomons' was

No. 39
Judgment
of the
District
Court
27-2-43
—continued.

because I was going to stay there”, *i.e.* this course had been decided upon in the car during the journey. The emphasis placed on the word “ why ” is to be noted.

I have given the go-by to Joslin’s evidence. It is clear that Joslin has contradicted herself. She even stated that on the night of the 18th April she was looking after the baby, whereas the baby was in Colombo at that time. There are also contradictions regarding the suit cases, and what suit cases were opened, &c. Joslin is an old woman and a grandmother. Undoubtedly, she is not a very satisfactory witness, and if her evidence stood alone, unsupported by any other facts, a court would not 10 feel disposed to act on her uncorroborated testimony. With regard to the evidence she gives about the later Colombo incidents I will deal with presently, but the plaintiff had a high opinion of her because she went to the extent of providing the trousseau for this witness’ daughter’s wedding. Yet the plaintiff would have the Court believe that after all the kindness shown to her, the milk of human kindness has so completely evaporated in her being, that Joslin now comes forward to join in a conspiracy to give false evidence against her benefactress. Joslin’s evidence does not materially affect this particular transaction.

I have so far proceeded on the assumption that the evidence given 20 by plaintiff, Merita, Miss Ludowyke and the 2nd defendant is true and correct. On their evidence alone it is clear that the conduct of the plaintiff and 2nd defendant was not that of normal people who found themselves in the situation they said they did, but shows that they had a motive for acting abnormally. I hold their evidence to be untrue and that the arrangements were, in fact, altered in the car. I say this for two reasons. In the first place there is the evidence given by Dr. Samahin on the Friday which he changed on Monday to bring it into line with the story told by the plaintiff, Merita and Miss Ludowyke. I hold Dr. Samahin’s evidence on Friday was the truth. In the second place there 30 is Miss Ludowyke’s admission that when she alighted at Mrs. Solomons’ house she was going there to stay. I must not be taken to find that Miss Ludowyke was privy to what the 2nd defendant and plaintiff were up to. She is a young girl who was in the position of a guest and she could not demur to the change of plan. If, as I hold, the plaintiff and the 2nd defendant had been on intimate terms previous to this date, much discussion would not be required to make known what was passing in their minds. The change of plan could have been effected either in the car or at the place where they halted for tea without Miss Ludowyke or Namasivayam suspecting that anything improper was intended, and 40 without Mr. Namasivayam hearing anything in the front seat. I hold that the change of plan took place while the parties were still en route. I further hold that the parties probably set out from Colombo with no intention of committing adultery, but during the long journey, thinking things over, temptation came, particularly when it is realized that by a small change of plan the two of them could meet together at Mrs. Jayewickreme’s house. Knowing that Mrs. Jayewickreme was an easy-going

person whom they imagined was staying alone, it was thought that she could be made a convenience of. When the parties got to the Solomons' the original plan had already been changed.

No. 39
Judgment
of the
District
Court
27-2-43
—continued.

I have been asked whether a wife who had relations with her husband on the 17th of April would desire to have intercourse with Dr. Samahin on the following day. This proposition assumes that a man who has partaken of a meal on Monday would not get hungry on Tuesday.

There is one matter on this part of the case which remains to be dealt with. In the answer which the 1st defendant filed to the interrogatories he swore the affidavit dated 29-10-42 in which referring to this incident he stated as follows :

“ The said parties again committed adultery on the night of the 18th April, 1941 at Bandarawela at a place *I cannot now specify.*”

That means that on the 29th of October, 1942 the 1st defendant, although he had evidence that the parties had committed adultery at Bandarawela on the night of 18-4-41, he did not know where it was committed. It is argued that the letters written by the 1st defendant to plaintiff show that she had written to him regarding all her movements during the Bandarawela trip. She did write about the trip, but I doubt whether she told him of the altered plans or other details. We have the letter in which 20 1st defendant says that he hoped his wife had had a pleasant trip in the hills and added that he had no objection to her going about with his friends. There is a subsequent letter in which he repeats the same statement. It is argued that, therefore, the plaintiff must have reported to the 1st defendant that the original plan had been changed and that she had slept the night at Mrs. Jayewickreme's with the 2nd defendant in the adjacent room. I do not agree that such an inference follows. Holding as I do that these parties committed adultery on that night, it is the last thing she would do to inform her husband of the change of 30 plan and that she and the 2nd defendant slept at Mrs. Jayewickreme's. Mr. Alles was under the impression that the arrangements which he had sanctioned on the 17th of April had been carried out. It has been pointed out that the snapshots taken on the 19th April at Mrs. Jayewickreme's by Merita had been sent by the plaintiff to the 1st defendant. Granting that this is so, how does it help the plaintiff? By looking at a snapshot the 1st defendant would not suspect that the wife and friend he trusted had changed plans he had sanctioned or that they slept at Mrs. Jayewickreme's. It is argued that Namasivayam being a member of the party would have told the 1st defendant all that had happened. That 40 assumes that Namasivayam knew what the plaintiff and 2nd defendant were up to. It is to be noted that Namasivayam does not figure in the snapshot and there is no proof that the plaintiff and 2nd defendant took Namasivayam with them to Mrs. Jayewickreme's or told him of where they slept. The 1st defendant's explanation of his statement in the affidavit is that when he swore it, he was aware that the plaintiff had spent the night out alone on 18-4-41 but not the place. His evidence on the point is as follows :—

“Q. You followed the trail, and with that object did you not question Namasivayam? A. I was not aware of any misconduct on that trip.

“Q. So you got information of the misconduct before you questioned Namasivayam? A. It was only when she informed me that she spent the night of the 19th April out. After going to Bandarawela I was aware that there had been misconduct. I went in November. (Affidavit is dated October) I got the information at Bandarawela that she had spent the night out.

“Q. You swore this affidavit on 23rd October? A. Yes. 10

“Q. How did you then say she had committed adultery on the 18th? A. Because my brother and mother had gone and she had stayed at the Solomons’ and my mother had also been told, that is all.

“(To Court : Q. At the date you went up to Bandarawela had you evidence in your possession that your wife had been unfaithful to you on the 18th April? A. I was aware that she had spent the night out.”

I hold that the facts when regarded as a whole prove not mere opportunity but that misconduct did take place at Mrs. Jayewickreme’s house on the 20 night of the 18th April.

While these things were happening at Bandarawela, the 1st defendant on 19-4-41 had to return to Jaffna. Thereafter he was continuously absent from his wife until he returned on the 9th August to attend the race meet in Colombo. Before he left for Jaffna he had lunch with his mother who warned him about the gossip then prevalent in Colombo connecting the names of the plaintiff and 2nd defendant. I have dealt with the reactions of the 1st defendant to his mother’s warning. When it is realized how greatly the husband trusted his wife and Dr. Samahin, it is absurd to suggest that anything which the plaintiff wrote to him in 30 her letters to him could have roused any suspicion in his mind. We have two letters P13 and P14 from him in which he assures the plaintiff, not once but twice, that he has not the slightest objection to her going anywhere with his friends. That clearly includes Dr. Samahin his best friend. Any acts of treachery on the part of his wife or his friend were farthest away from his thoughts.

Let us now see how the Bandarawela party was employing its time in the hills. After having breakfasted at Mrs. Montague Jayawickreme’s the plaintiff had to get back to Mrs. Solomons’ to pack, get her luggage to the station, pay her bills and send Joslin to Colombo by train. After 40 that Miss Ludowyke, Merita, plaintiff and the 2nd defendant had lunch with Mrs. Jayewickreme and Errol. It was then the snapshots were taken. In all these proceedings Namasivayam took no part. The party then left for the dance at Nuwara Eliya. When they got there they found every room at the St. Andrews’ Hotel occupied. Noel de Costa was staying at the St. Andrews’ Hotel sharing a room with Mr. Welsh,

and plaintiff was able to persuade them to place their room at the disposal of her party. A great deal of time was taken up in examining what happened at the St. Andrews' Hotel on the 19th April and the following morning. I have already stated that there is no proof from which any misconduct between the plaintiff and 2nd defendant can be inferred on this occasion.

No. 39
Judgment
of the
District
Court
27-2-48
—continued.

On their arrival at Nuwara Eliya Dr. Samahin and Mr. Namasivayam occupied the hotel bed room to wash and change while the ladies went into a ladies' room or bath room in order to tidy up. They then went
10 to the pictures. After dinner the men changed in the bed room because Namasivayam owing to some deformity in his hand could not dress himself. The ladies changed into their dance frocks and sarees in the ladies' room. They then went to the dance and returned in the early hours of the morning of 20-4-41. The whole party consisting of two men and three ladies accommodated themselves in the bed room placed at their disposal. The cross-examination was intended to elicit whether misconduct took place in this bed room. I cannot believe such a thing could have happened in the presence of an additional man and two women. No specific charge of adultery at Nuwara Eliya has been made or raised
20 in the issues. In the morning the parties changed and came back in Namasivayam's car to Colombo.

Miss Ludowyke says that she stayed on at Merlton for about 10 days because Merita's birthday was due. I do not believe this evidence. Is it likely or feasible that this young girl who had with reluctance been allowed to leave home for the first time, would on the termination of that journey be allowed to stay for a period like 10 days at Merlton? What was the necessity for her doing so? The suggestion that because Merita's birthday was approaching she was asked to stay is neither probable nor convincing. One could reach Merlton from the Ludowykes house at
30 Dehiwela in a few minutes by car and there was no particular reason why Miss Ludowyke should stay on at Merlton until Merita's birthday. It is also to be observed that as in the case of Sansonis, no questions were put to the servants, *e.g.* Alice, Joslin and Pabilis as to whether Miss Ludowyke stayed at Merlton, or whether the acts which the servants speak to, took place while she was there. For example, the servants say that after the plaintiff returned from Bandarawela she and 2nd defendant used to go out together at night, sometimes alone and sometimes accompanied by Merita; and that on some occasions the 2nd defendant used to sleep the night in the house and that the plaintiff used to sleep with
40 him. Surely, if Miss Ludowyke was staying in the house, would they leave Miss Ludowyke alone at home while Merita, plaintiff and 2nd defendant went out. If Miss Ludowyke knew that 2nd defendant slept in Merlton why were the servants not asked this? I do not believe Miss Ludowyke stayed at Merlton. It is false evidence which this young girl has been induced to give to save the situation.

The witnesses on this final charge of misconduct are Alice the cook woman, Joslin the ayah and Pabilis the servant boy who had entered the

No. 39
 Judgment
 of the
 District
 Court
 27-2-43
 —continued.

service of the plaintiff about June, 1941. Alice was asked why, when her master was staying alone in the house in April, 1941, she did not tell him what had been going on at Merlton before her mistress had left for Bandarawela. The answer Alice gave is that which any servant would give, namely that it was not her place to make complaints when there was Merita whose duty it was to complain. Alice says that the master would not have believed a complaint which Merita did not make. She asks whether the master would have believed her or her mistress? Knowing as we do the trust and faith the 1st defendant reposed in his wife and friend I think Alice is right. She is only a menial. If the mistress' 10 sister allowed improper conduct to take place in the house without protest why should she take the initiative? She was asked why she, being a respectable woman, did not leave the house where things like this were happening? But one must consider the question from the point of view of Alice. Good situations are not easy to obtain. Alice was being well treated in this house. She was poor and, therefore, she minded her own business. Her evidence when fairly read makes it clear that the night trips she speaks about and, about 2nd defendant staying the nights at Merlton took place after the return of her mistress from Bandarawela. It will be seen from her evidence that the relationship between the plaintiff 20 and 2nd defendant was a progressive one. At the start there was love making and conduct which savoured of a newly married couple an "aluth joduwa." But as time went on and the intimacy became regularised, the open love making receded into the back ground and by the time the plaintiff returned from Bandarawela the relationship had become routine. On the occasions when Merita accompanied them, the latter went into the house first leaving plaintiff and the 2nd defendant chatting in the car under the portico. The doctor and the plaintiff then entered the house. Alice says that the plaintiff had asked her to sleep near the door so as to let the party in. She sometimes admitted the plaintiff and 2nd defendant 30 into the house. The latter would then go into the spare room. She would hear the plaintiff undressing and the chain in the lavatory pulled. The light in the plaintiff's room was extinguished and the plaintiff would go into the 2nd defendant's room where she stayed the night. In the morning before the 2nd defendant left, plaintiff would prepare an egg flip for him, etc. Joslin supports this evidence and gave another item of evidence. Joslin says that one day when taking the perambulator along the path from the kitchen side of the house towards the gate, the child was creating a disturbance by attempting to get out of the perambulator and walk. Joslin says at that time the 2nd defendant was in the spare 40 room. Hearing the noise made by the child outside the window of the spare room the plaintiff put the roller blind aside and looked out of the window to see what was happening to the child. She swears that at that time the 2nd defendant was in the room.

All the servants say that the 2nd defendant when he came to Merlton parked his car either under the portico or under the temple tree on the left hand side of the house.

Pabilis in addition to the general evidence he gives has described one specific instance which was capable of being tested. He says that Mr. Paul de Costa used to visit Merlton in the mornings but on one occasion he came unexpectedly in the afternoon when the plaintiff and 2nd defendant were together in the spare bed room. He says that the 2nd defendant's car was then parked under the temple tree. From the kitchen quarters Pabilis saw Paul de Costa's car turning into Merlton through the left hand gate. At the inspection I was satisfied that this is possible. He feared that Paul de Costa would discover the plaintiff and
10 2nd defendant together and thought it was his duty to warn her. He accordingly went to the door of the spare room. The lady answered his knock and he told her that her father was coming. So saying Pabilis went to the front door, which was usually kept closed during the day for fear of thieves. By that time Paul de Costa was on the verandah and Pabilis says he observed the plaintiff who, when last seen was in the spare room on the left wing of the house, emerging through her bed room door on the right wing of the house. The suggestion is that in a panic she had run through the lavatory on the left wing and regained access to her side of the house under cover of the shoe flower hedge. Paul de Costa observed
20 nothing unusual, and left after some time. It is urged that the fact that the 2nd defendant's car was under the temple tree either escaped his notice or created no impression on his mind.

Now either the evidence of Pabilis is true or it is false. Comment has been made that the evidence of the servants is so general in its nature that it is impossible to test their testimony or call evidence to contradict it. This specific incident referred to by Pabilis is denied by the plaintiff and the 2nd defendant. Merita is unable to say anything about it because at this time she is said to have been in her bed room. Now here is an incident upon which independent evidence was available if it is false.
80 Why was Paul de Costa not called? He was a witness on the plaintiff's list and was present in Court. Counsel for the plaintiff stated that by calling him it would not advance his case. He also stated that he was not prepared to place Mr. de Costa at the mercy of Mr. Wickremanayake's cross examination and so "make the cup of humiliation of his client to overflow." Yet while the father is not called, the plaintiff had no compunction in allowing her young unmarried sister to face the same "humiliating cross-examination." Paul de Costa was a material witness for the plaintiff particularly in a case where the plaintiff complains that the servants' evidence is general and that there are no specific instances
40 which provides her an opportunity of calling evidence to contradict. The incident referred to by Pabilis is a specific instance. Paul de Costa was in a position to admit or deny that he ever called at Merlton at an unexpected time. He would have been able to say whether he saw or did not see the 1st defendant's car under the temple tree. His evidence was available to discredit the evidence of Pabilis. Yet had he faced the witness box there were other questions which Mr. Wickremanayake in cross-examination could have put to him. For example, reference has been made to the fact that there was gossip in Colombo regarding which

No. 89
Judgment
of the
District
Court
27-2-48
—continued.

the 1st defendant's mother had to speak both to her son and daughter in-law. We know that Mr. Paul de Costa too had occasion to complain to the plaintiff herself about her association with the 2nd defendant. If the evidence is true that she *never went out alone with Dr. Samahin*, but was always accompanied by Merita, Paul de Costa would have been asked to explain why he objected to his married daughter's association with Samahin and not his unmarried daughter Merita's association with him. According to Merita her father's objection was that plaintiff was going about to dances, etc., with Dr. Samahin. He would also have been questioned as to why Merita left Merlton on 26-8-41. She had been 10 staying in Merlton from the time she returned from Kodikanal. It is said that she left Merlton because her father was lonely on the estate and as he was living separated from his second wife, he asked Merita to live with him after Mr. Alles returned from Jaffna. This explanation is unconvincing. Paul de Costa had been leading a lonely life from a period anterior to the 26th of August, 1941. I think the true reason why Merita left is that the father considered it improper to allow a young unmarried girl whose chances of marriage would be jeopardised by continuing to live in a house about one inmate of which there was gossip in Colombo. How could he be more humiliated by entering the witness 20 box than his unmarried daughter?

The reason why Merita had to be called and exposed to cross-examination, and why Paul de Costa was not, is because there were certain questions which could have been put to him in cross-examination whereas it was considered essential for the success of the plaintiff's case that Merita should face the ordeal of cross-examination whatever the result.

I see no reason to disbelieve the evidence of Alice. Although the evidence of Joslin with regard to the incidents at Bandarawela is not satisfactory, she has not really been shaken with regard to the matters she refers to as having taken place in Colombo. The evidence of Pabilis is 30 attacked. It is said that he is a false witness discovered for the first defendant through the instrumentality of one Marcus Silva. 1st defendant denies this. He says when he was preparing his case it was ascertained that Pabilis was one of the servants living in the house at a material period, and through the instrumentality of his mother's driver the witness was traced. I think that is how witnesses would be traced in this country in cases where the aid of the authorities cannot be invoked. There is a discrepancy between the evidence of Dr. Rutnam and Pabilis, as to when Pabilis was employed at Dr. Rutnam's hospital. I have therefore been asked to reject Pabilis' evidence. According to Pabilis he stayed at Dr. 40 Rutnam's during a certain period, whereas Rutnam says it was at a different period. It may be that one or both of these witnesses cannot remember. A master does not usually after some years remember the date on which he dismissed a servant from his employ. Rutnam has produced no books, and is relying on his memory. Pabilis too is not the type of man one would expect to remember precisely the time when he was employed by a particular employer. He has no pocket register from

which one can check up the date. Pabilis' evidence however receives corroboration from certain facts which he stated and which he could not fabricate. He says that after the 1st defendant returned from Jaffna when he was serving at Rutnam's house, the plaintiff used to come to Rutnam's and put through telephone calls to Dambulla to which place Dr. Samahin had been transferred. Dr. Samahin was transferred to Dambulla in October, 1941. He then took sick leave (2D4) until February, 1942. He assumed duties at Dambulla on 28-2-1942.

No. 39
Judgment
of the
District
Court
27-2-43
—continued.

The suggestion is that plaintiff in the same way as she used Mrs. Montague Jayewickrema as a convenience, made a convenience of the telephone of her friends—Dr. & Mrs. Rutnam—in order to get into communication with the 2nd defendant. Dr. Rutnam's telephone No. is Colombo 9928 and that of the Dambulla Hospital is Dambulla 2. 1D13 proves that between 9-5-42 and 31-7-42 four calls, two of which were of 6 minutes' duration, were put through from Colombo 9928 to Dambulla 2. Dr. Rutnam says there was no occasion for him or any member of his staff to ring up the Dambulla Hospital where the 2nd defendant was at the time. Plaintiff admits putting through two of these calls but denies the other two. The probabilities are that she put through all of them. She was asked what the purpose of these calls was—two of them being long ones. Her reason is unconvincing. She says that her counsel wanted her to find out from the 2nd defendant some matter of no particular importance. At the time she was represented by a proctor who could have ascertained all that counsel wanted to know. There was no necessity for a client who has entrusted her case to a man like Mr. Corbett Jayawardene, Proctor, to spend money on trunk calls or do work which the proctor should have done. Her proctor has given evidence but was not questioned on this point. The evidence therefore corroborates the evidence of Pabilis. This is hardly the kind of evidence a menial like Pabilis could have invented. His story is tested and it is corroborated. Pabilis however gives another item of evidence. He says that when he was staying at the Rutnam's hospital Dr. & Mrs. Rutnam after their day's work would sometimes go to the 9-30 p.m. show at the pictures. Pabilis says that on one such occasion the plaintiff came to Rutnam's house after the Rutnams had left for the pictures and the 2nd defendant came in a car and drove her out and brought her back before the Rutnams returned. Dr. Rutnam admits that he and his wife do go to the pictures and that plaintiff was in the habit of coming to their house, both as a friend and as a patient and that she might even stay a day or two with them. That the Rutnams are very good friends of the plaintiff is proved by the fact that with regard to the custody of Hortense the parties reached a private arrangement that the 1st defendant should send Hortense to Dr. Rutnam's bungalow where the child would meet her mother. It is proved that although the agreement entered into between the parties was that the plaintiff should not remove the child from the Rutnam's house, particularly to the house of Paul de Costa, the evidence shows that in breach of this agreement the plaintiff at Christmas and New Year removed the child to the house of Paul de Costa. This proves that not only is the plaintiff a person who would

break a solemn agreement if it was to her advantage to do so, but also that she is not a credible witness. She denied she broke the agreement, whereas her brother Noel proves she did.

In considering the credit to be attached to the servants one must contrast their evidence with that of the plaintiff and 2nd defendant. I think such an examination is favourable to the servants and discreditable to the plaintiff and 2nd defendant. The plaintiff had to admit in the witness box that she has stated what is untrue on oath. Before this trial started there were certain preliminary proceedings. One of them was an application by the plaintiff for alimony and maintenance. In paragraph 7 10 of her affidavit 3B dated 1-4-42 she swore to the following facts:—

“The respondent (1st defendant) is a Barrister-at-Law and an Advocate of the Supreme Court practising his profession in Colombo. He has frequently during the past three years acted as a Crown Counsel and I *verily believe* that the respondent’s average net income exceeds Rs. 750 per month. *The respondent also receives substantial sums of money from time to time from his mother who is a lady of considerable means.*”

At the date the plaintiff swore this affidavit, she was in bed having been delivered of the child Joseph Richard five days previously. The jurat 20 shows that the affidavit was duly read over and signed by Mrs. Alles who understood its contents. What is more, in paragraph 7 itself she made two corrections and initialled the margin. In that paragraph there are two separate statements of fact. She “*verily believes*” that the 1st defendant’s income is Rs. 750, and there is a definite assertion that he also *receives* substantial sums of money from time to time from his mother. One is a question of belief the other is a question of fact deliberately made in order to induce the Court to grant her a substantial amount by way of alimony. She then gave evidence at the alimony inquiry as follows:—

“Q. Who prepared this affidavit? . A. My proctor, Mr. Jaya- 30 wardena.

Q. Who gave the proctor the figure Rs. 750? A. That I do not know.

Q. Did you give him that figure? A. No, I did not.

Q. Proctors do not imagine things, they act on instructions. No doubt the language used is the language of the proctor but you read it over before you signed it? A. Yes.

Q. You have stated this in the affidavit ‘And I *verily believe* that the respondent’s average net income exceeds Rs. 750 per month’—did you give that figure? A. No, I did not. 40

Q. You have also gone further and said that he receives substantial sums from time to time from his mother who is a lady of considerable means? A. *His mother gave him whenever he wanted any money.*

Q. Did you tell that to the proctor? A. *Yes, I told him whenever my husband wanted any money he always went to his mother.*”

The witness then went on to say that the affidavit was sworn before Mr. Albert Peries, but she denied that Mr. Peries read over the affidavit to her before she signed it but she added: "*I knew what I was signing*". Pausing there, the plaintiff's evidence means that when she asserted that the respondent also receives substantial sums of money from time to time from his mother she was asserting a definite fact which she knew of her own knowledge. Contrast this evidence with that which she gave at this trial. She stated that after her marriage to the 1st defendant *she did not think he got anything from his mother*. In her evidence she stated that *she had no knowledge that the mother of the 1st defendant gave him any help and she swore to that statement*. Then follows the following evidence:—

No. 89
Judgment
of the
District
Court
27-2-43
—continued.

“ Q. You swore an affidavit for the purpose of the alimony inquiry?
A. Yes. (Shown affidavit). This is signed by me.

Q. (Paragraph 7 last sentence put to witness). You have stated there “the respondent also receives substantial sums of money from time to time from his mother” which is false? Your present evidence or that statement? A. *Neither of them is false.*

Q. Will you reconcile the two statements then? You said definitely that it was a matter of resentment between the two of you that his mother never gave him anything? A. *What do you mean by reconcile?*

Q. You have stated on oath yesterday and today that Mr. Alles received nothing from his mother. You have set out in the affidavit that he received considerable sums of money from time to time from his mother—you say neither of those statements is false? Tell me how they can both be true? A. *No answer.*

Q. Can you tell me which statement is false? A. They are not false.

Q. Are both true? A. I think so.

Q. Then will you tell me if both statements are true how you reconcile the two statements? A. *No answer.*

Q. Do you say that the statements you made today do not contradict the statements made in the affidavit? A. *They do not.*”

What this proves is that this lady will not hesitate to tell a falsehood when it suits her purpose to do so. I think there is force in Mr. Wickremayake's contention that none of the servants were shaken in the manner this plaintiff was. I have to choose between the plaintiff and the servants on the facts. I prefer the servants' evidence as being the more credible. The plaintiff has said what is not true on another point. With regard to the possibility of a person in the front verandah of Merlton seeing a person pass behind the shoe flower hedge she stated that if she ran past the shoe flower hedge her father would have seen her at once. She was then put the following question:—

“Q. There is a shoe flower hedge at the back of the house?
A. When I was there it was about my height,” and the witness added, “even if I went behind the shoe flower hedge I had to go between the two spaces there.”

The inspection of the hedge satisfied me that there were no spaces and that the foliage was thick enough to afford adequate cover for a person of the plaintiff's height to pass behind it unseen from the front. According to the plaintiff she had written to her husband that she had spent the night of the 18th April at the Jayawickrema's with the second defendant in the adjacent room. She says that she had instructed her lawyers upon 10 this matter, and yet it was not specifically put to the 1st defendant when he was under cross-examination, particularly when in answer to the interrogatories he had stated that although he was in a position to prove adultery on the 18th April he did not know where it had been committed.

With regard to the credit of the 2nd defendant I have already drawn attention to the manner in which he changed his story on Friday and brought it into line with the case of the plaintiff when he gave evidence on Monday. There is another matter. When Mr. J. E. M. Obeyesekere was cross-examining Mr. Alles he put the following question to him :

“Q. Would you describe Mrs. Namasivayam has good looks ? ” 20
Before the witness could answer Counsel for Mr. Alles objected and asked cross-examining counsel how Mrs. Namasivayam's good looks were relevant to this case ? Whereupon the record proceeds :

“Mr. Obeyesekere says that *if the 1st defendant did not actually misconduct himself with Mrs. Namasivayam he was in love with her.*

I ask counsel how this is relevant to any issue in the case ? He says that the 2nd defendant's case is that owing to 1st defendant's neglect of the plaintiff *he threw the plaintiff into the company of the 2nd defendant and that the 1st defendant is bringing up a false charge of adultery between the plaintiff and 2nd defendant.* 30

“ I ask whether it is pleaded in the answer.

“ He says adultery is denied.”

What that means is this. The 1st defendant is suing the 2nd defendant for damages and 2nd defendant's counsel stated that owing to the act of the 1st defendant in neglecting his wife he threw her into the company of the 2nd defendant which may or may not have conduced to the adultery, if misconduct there be. If such negligence is proved it would help to minimise damages. It may even mean that the first defendant will fail in his case ; because under section 600 of the Civil Procedure Code if the court finds that the first defendant “has been in any manner 40 *accessory to or conniving at the act or conduct which constitutes the ground upon which the dissolution of the marriage is prayed for.....or has condoned the same,*” under section 601 the Court would be justified in dismissing the first defendant's charge.

When the second defendant was being cross-examined, counsel took this matter up with him and Dr. Samahin stated unequivocally that he made no such suggestion and added "I have *never* made such a suggestion." He was then asked the following question:

No. 39
Judgment
of the
District
Court
27-2-43
—continued.

"Q. It was suggested by your counsel that Mr. Alles threw his wife into your company and has brought this action against you because he was in love with Mrs. Namasivayam—do you make that suggestion? A. No."

This placed Mr. J. E. M. Obeyesekera in an embarrassing position. I cannot believe that learned counsel made the statement in question without explicit written instructions on the point. This happened before the luncheon interval. What transpired between legal advisers and client during the luncheon recess we do not know, but when the court resumed after luncheon the following record has been made:

"The witness says that he wants to make an explanation. I tell him it is better not to volunteer anything, that any explanation he has to make should be told to his learned counsel who will then decide what action should be taken."

But Mr. Wickremanayake however was not content to leave it at that and he returned to the point as he was still cross-examining the witness:

"Q. Dr. Samahin, you told me in the morning that you were not making any suggestions.....? A. *I had made a mistake* this morning when I stated that I was not making any suggestion between Mrs. Namasivayam and the first defendant.

"Q. You told me that you had not given instructions to that effect? A. That was a mistake.

"Q. That was the evidence which you gave just before lunch? A. Yes.

"Q. You were asked by me specifically a number of questions which you said were not on your instructions? A. Yes.

"Q. You saw your counsel giving to the Court to initial type-written instructions? A. Yes.

"Q. You had a talk with your proctor? A. Yes, I spoke to my proctor. He showed me the copy of those instructions *and those instructions were there.*

"Q. Did you give the instructions or did you not—which is the truth? A. I gave the lawyers the same instructions.

"Q. That is suggesting the first defendant was having immoral relations with Mrs. Namasivayam—what is your case now? A. I said I met him there alone.

"Q. I was talking about the suggestion which you denied in the morning and which you now admit—what is the position you are taking up? What are the instructions you have given? A. (Witness hesitates).

No. 89
Judgment
of the
District
Court
27-2-43
—continued.

“Q. Is it the case that Mr. Alles to enable him to go with Mrs. Namasivayam threw you into the company of his wife? A. It *may* be so.

“Q. With the intention of enabling you to misconduct yourself? A. Not to misconduct.”

Although learned counsel got me to initial a document which it now appears were the instructions given by this witness to his lawyers, counsel could not produce those instructions without the client's consent. But the point of all this is that Dr. Samahin has proved himself to be a person who is unworthy of credit. It also proves that like the plaintiff, he is a person who would say anything provided it suited his purpose. He was even prepared to throw his own counsel overboard in order to gain an advantage. What is the value of the evidence of a man of this kind? The servants have fared far better in the witness box than either Dr. Samahin or the plaintiff did.

I, therefore, hold that from the time the plaintiff returned from Bandarawela about the 20th April until the time her husband returned, these parties were misconducting themselves at Merlton both by day and by night as stated by the servants. I further hold that Merita was aware of the facts but was powerless to do anything in the matter. That was the reason why she left Merlton on the 26th August. The period here involved takes in the months of June and July, 1941. The relevancy of that will be clear when the medical evidence is considered.

It is now necessary to deal as briefly as possible with the remaining incidents. The first defendant returned from Jaffna on the 20th August. He had come to Colombo on the 9th August and had slept that night with the plaintiff but he had to leave for Jaffna on the following day. Thereafter the parties did not meet again until about the 21st or 22nd August. I hold that at this time in spite of gossip that was going round Colombo, the first defendant still loved his wife very dearly and had implicit faith and trust in the integrity and loyalty of the second defendant.

I note in passing that according to the plaintiff her aunt Miss Neydorff came and spent two weeks at Merlton about the 26th April, 1941, that is after plaintiff returned from Bandarawela. If so, she would be a material witness who could prove that no misconduct took place in Merlton while she was there. Why then does her name not appear in the various lists of witnesses filed by the plaintiff before this trial began? After the pinch of the case was discovered an application was made to call her, and the order I then made refusing the application will show that it was on a question of procedure that the application was refused. Surely, the plaintiff and her legal advisers must have known or should have been told that Miss Neydorff was a material witness? The omission to place her name on the list of witnesses is inexplicable. They knew that every person who lived at Merlton during the relevant dates would be a material witness. It is inconceivable that the lawyers did not ask plaintiff to give them a list of such persons. In this connection reference should be made

to letter P16 written by the first defendant from Jaffna to his wife on the 1st May, 1941. It is argued that the following sentence in that letter " I am surprised that Anta (Miss Neydorff) has found the time to come to our house—how did she manage it " supports the plaintiff's story that Miss Neydorff came on the 26th April to stay at Merlton for ten days. Mr. Wickremanayake argues that the sentence does not prove anything of the kind, and that it only proves a casual visit of an aunt who up to that time had neglected Merlton, and that if Miss Neydorff did visit Merlton it does not prove that she was staying there or could have seen
 10 or witnessed any misconduct. If she did stay for ten days, a fact which the servants have denied, it is inexplicable why her name is not on the list of witnesses filed before this trial began. On the 28th April was Merita's birthday and I think it was for the birthday that Miss Neydorff came and I doubt whether she stayed in the house at all.

No. 39
 Judgment
 of the
 District
 Court
 27-2-43
 —continued.

At Merita's birthday an unpleasant incident occurred. There was a row or some kind of disagreement between Mr. Namasivayam and the plaintiff. According to the plaintiff, she dropped the Namasivayam's after this. The letter P16 dated 1st May, 1941 from the first defendant to his wife says that he was upset to hear about the scene regarding the
 20 Namasivayams and that it would be best " to drop them and go slow." I do not think the row was as serious as the plaintiff seeks to show. She had been in the habit of receiving presents from Mr. & Mrs. Namasivayam in the past, and when after this unpleasant incident Mrs. Namasivayam sent her a present the plaintiff not only accepted it, but had it exchanged for something else at the shop. If the row was so serious I would expect the plaintiff to have had nothing to do with either Mr. or Mrs. Namasivayam or their gifts thereafter. The plaintiff suggests that her husband was in love with Mrs. Namasivayam. She now had the opportunity, acquiesced in by her husband, of terminating a friendship that was
 30 distasteful to her. Yet she accepted a present from Mrs. Namasivayam. I disbelieve the suggestion about the first defendant being in love with Mrs. Namasivayam. As he himself admits he liked her company ; but merely to like a woman's company does not prove he is in love with her or that he has misconducted himself with her.

About the 7th or 8th May Mrs. Alles (Senior) spoke to the plaintiff about the gossip that was going the round regarding her relations with Dr. Samahin. It was then that plaintiff complained to the first defendant about her mother-in-law's action which brought the reply P28 from him. I see no reason to disbelieve the evidence of Mrs. Alles (Senior) that she
 40 spoke to the plaintiff about her association with " a certain man." It was the plaintiff who asked her whether it was Dr. Samahin, and Mrs. Alles then replied " Your conscience will tell you who it is."

On the 30th June was Hortense's birthday. On the 21st July we have the letter P22 which throws some light on Miss Ludowyke. I here remind myself of the rule in the Eliyatamby case. Although P22 is admissible in evidence as between husband and wife it will not supply

No. 89
Judgment
of the
District
Court
27-2-43
—continued.

evidence against Dr. Samahin behind whose back it was written. But it is relevant as showing how outsiders regarded Miss Ludowyke. In this letter the first defendant writes as follows :

“Who gave you the idea that I have a soft corner in my heart for Teddy (the name by which Miss Ludowyke was known to her friends). Good gracious me. That is Sam’s preserve. I would not dare treading on his corns.”

At the time that the first defendant returned to Colombo and resumed married life with his wife he still loved her and implicitly trusted her and Dr. Samahin. The tone of his letters proves this. The lives of husband and wife until November were uneventful. In September in order to get his Crown Counselship the first defendant enlisted the good offices of his mother and brothers to interview certain persons with regard to this appointment. According to the plaintiff, it was in September that she told her husband that she was pregnant to him. It will be recalled that the only coitus the parties had before Mr. Alles’ final return to Colombo was on the 9th and possibly the morning of 10th of August. The plaintiff says that she had no menstrual period in September and when she told her husband about it and he replied that she should wait and see what happened next month. These facts belong to the medical aspects of the case.

In October Pabilis left and the second defendant was ordered to go to Dambulla. He did not do so until February, 1942. At a later date when the first defendant made application to the Colombo hospital authorities for copies of Dr. Samahin’s attendance register and anæsthetist’s record, they were found to be missing. One of the documents was subsequently returned to the authorities by the first defendant’s proctor. The suggestion is that these documents were taken away by the first defendant to prevent people from finding out his movements on the material dates.

80

On the 23-10-41 the plaintiff consulted Dr. Wickremasooriya regarding her pregnancy. On the 3-11-41 plaintiff celebrated her birthday, and although Mr. Namasivayam had grievously insulted her, she accepted a gift from Mrs. Namasivayam. On a certain day in November which has not been fixed, but was a race day and may be either the 15th, 22nd or 29th November, Dr. Wickremasooriya examined the plaintiff at Merlton and told Mr. Alles that his wife was then in the fifth month of pregnancy. Mr. Alles says that this information gave him “a jolt.” He had been continuously absent from his wife from the 17th April until the 9th August. Thereafter he was absent from his wife from the 10th August until the 21st August. Therefore according to his calculations any child his wife conceived and in November was in the 5th month of pregnancy could not have been begotten as the result of coitus on the 9th and 10th August. 1st defendant’s evidence however all along has been that on the 9th and 10th August he had no intercourse with his wife. He had come down for the races and was tired after his journey. He had been going about the Fort shopping in the morning, and had spent a tiring

day at the Governor's Cup meet at the racecourse. He says he was too tired to have any intercourse. Counsel on both sides have, however, proceeded on the footing that Mr. and Mrs. Alles did have intercourse on the 9th and the morning of the 10th August. When Dr. Wickremasooriya in November told Mr. Alles that his wife was in the fifth month of pregnancy he as a layman could not make out the arithmetic. From the 9th of August to the middle of November is not five months but only three months and some days. It was at this point that Mr. Alles began to get suspicious, and troubles arose between husband and wife for the first time. All the warnings which his mother had given him took shape. He recalled the fact that Paul de Costa also had warned his wife about her association with the second defendant. The friendship, association and outings of the plaintiff and the second defendant coupled with the local gossip began to assume a sinister significance. Being a lawyer, he could not act without grounds; and I believe him when he says that he took no action but began to make certain "discreet enquiries" as he puts it. The first row which is known to have taken place between husband and wife occurred on the day of Dr. Wickremasooriya's visit in November. It arose out of a trivial incident but it is clear that the nerves of both parties were on edge. Jane the servant maid contracted an earache, and the plaintiff, rather unwisely, pushed some garlic into her ear which made the condition worse. The 1st defendant blamed his wife for this treatment and words passed between them. As the girl was no better, Alles had to take her to the hospital; but she would not allow any treatment to be done to her, and in a very bad temper he brought her back home. From that day forward the lives of these two people were destined to be a stormy one.

I believe the 1st defendant when in P2 he says that he repeatedly warned plaintiff regarding her continued association and intimacy with Dr. Samahin and that he had requested her to desist from doing so.

It is necessary to see how the plaintiff reacted to that exhortation, and to ascertain whether the first defendant is wrong when he said in P2 that in spite of his requests she persisted in her behaviour culminating in repeated violent quarrels and outbursts which made living with her insupportable.

There is no evidence of any misconduct proved after the 20th August. The only incident which may be open to comment is the visit of the second defendant to Dr. Rutnam's hospital on an unspecified date after the Rutnam's had gone to the pictures, when he took the plaintiff out in a car and brought her back before the Rutnams returned. No allegation of adultery has been made in regard to that incident, nor do the facts justify such a finding.

At the end of November, 1941 the second defendant was in India (See 1D9). The Police Dance took place on 5-12-41. A great deal has been said on both sides about this event, but in the general perspective of events it assumes somewhat insignificant proportions. The position in which husband and wife found themselves at this time was this:—

The plaintiff was pregnant. Her husband was beginning to suspect her fidelity in view of Dr. Wickremasooriya's statement in November. During her first pregnancy she had suffered from hæmorrhage which necessitated her remaining in bed for a considerable period before Hortense was born. There was gossip going on in Colombo. The first defendant says he, therefore, told his wife that she should not go to the Police Dance, and gave as his reasons that it was not good for her in a state of pregnancy to attend such functions, particularly owing to what happened during her previous pregnancy. The reason which he did not communicate to his wife was that he wanted to prevent the association between Dr. Samahin 10 and her, and to let the gossip die down. The first defendant although he did not want his wife to go to the Police Dance, arranged to go to it with Mr. and Mrs. Namasivayam. This offended the plaintiff. She had been insulted by Mr. Namasivayam. She was jealous of Mrs. Namasivayam. Knowledge of how human beings react to circumstances should have shown Mr. Alles, who is an advocate, that he was setting about to gain his ends in the wrong way. Mrs. Alles' position is "I was quite willing not to go to the dance, if my husband did not go too. If he was going to prevent my going in order to philander with Mrs. Namasivayam I would go too." The first defendant on the other hand, who had been 20 away at Jaffna working hard while his wife was having a good time in Colombo, saw no reason why he should forgo his pleasures although he believed it was not desirable that his wife should go. His conduct has been characterised as being egotistical and tyrannical. The evidence proves that husband and wife were both egoists. I cannot say who was the greater. Mr. Alles certainly was tactless. Yet one can see his point of view. He may have argued as follows: "My wife's name has been coupled with Dr. Samahin. It is best that she should not appear in public for some time, particularly as she is in a state of pregnancy. That however is no reason why I should forego my pleasures." The result of 30 these clashing view points was that there was a serious row between the husband and wife, which led to the plaintiff leaving her home in a temper and going to the house of an aunt, Mrs. Wallis, at Dehiwela. The first defendant when he found that his wife had gone, went to her and made peace and brought her back. I believe he agreed that he too would not go to the dance. This however upset the Namasivayam's arrangements. The first defendant having given his word to his wife not to go to the dance found himself on the horns of a dilemma. He wanted to stay at home with his wife but the Namasivayams apparently were unable to make last minute changes, and so he broke his word and went to the 40 dance with the Namasivayams. I think as a prudent husband he should have stood by his wife as he had always done up to now, and he might have thus saved the situation. But it is a characteristic of the first defendant that his pleasures come first, and on this occasion he succumbed to that failing. The plaintiff thereupon phoned up the second defendant and induced him to take her to the dance. It was a petty triumph which enabled her, as she thought, to spite her husband. When the plaintiff turned up at the dance, in order not to create a scene, Alles

danced with his wife "to keep up appearances" as he put it, and Samahin and the plaintiff then left. Nothing turns on this incident. No misconduct took place on that night. When the husband and wife met that night in their bed room Alles asked her why she had gone to the dance against his wishes, and she replied "I will do what I like, I will go where I like, and with whom I like" That is merely the retort of an angry woman.

No. 39
Judgment
of the
District
Court
27-2-43
—continued.

Somewhere about this time Revd. Father O'Haloran, the Parish priest, interviewed the plaintiff and the first defendant. This evidence
10 was not put to the first defendant, but according to the plaintiff the first defendant refused to discuss matters with him.

On the 6th of December the first defendant appears to have met Dr. Samahin. It is asked why Mr. Alles did not question Dr. Samahin about the gossip and tell him not to take his wife about? Alles explains that he had no proof at this time of misconduct, and that if he spoke to the second defendant it would only have made the plaintiff more obstinate. First defendant says he however did tell the second defendant that it would be good if he did not take the plaintiff out too often. I think that is a reasonable story. The first defendant is a lawyer, he could make no
20 charge against the doctor although he had suspicions. He has so to act as to live down the gossip that was going on, and at the same time maintain peace with his wife and friend. It may be quite true as the plaintiff says that the second defendant came to lunch and that outwardly everything was very cordial.

On the 7th December came the Silver Wings Carnival incident. On this occasion too the first defendant went with the Namasivayams. His reasons for not taking his wife are the same he gave for her not going to the Police Dance. The plaintiff, however, turned up with the second defendant. All this proves the obstinacy of both parties and a reluctance
30 for mutual give and take. It does not establish any misconduct. After this incident the first defendant says he had had enough of it. Accordingly, somewhere between the 7th and 14th December he decided that living with the plaintiff had become impossible. Up to this time the first defendant had stood by his wife. He had estranged himself from his people by refusing to listen to their warnings. Now the pendulum swung the other way and he began to think that his mother's warnings had a substratum of truth. Dr. Wickremasooriya's statement in November that his wife was five months in pregnancy, the gossip that he was hearing
40 at every turn in Colombo, coupled with the manner in which the plaintiff insisted on going out with the 2nd defendant in spite of his requests, made it impossible for him any longer to live in peace in the house. The life of those two people at this house must have been a stormy one. There must have been continual rows. The necessary reactions followed. The first defendant's faith and trust in his wife and friend having been shattered, a reaction set in and he went back to his people for advice and counsel. It has been said that the prodigal son having returned, the fatted calf which was offered him was the promise that all his debts

No. 39
Judgment
of the
District
Court
27-2-43
—continued.

would be paid if he abandoned his wife. I do not think any such consideration was offered to the first defendant for leaving the wife. In the course of discussions which Alles had with his people it is possible that his financial condition was discussed. I cannot believe however that any bargain of the kind suggested was struck.

The 20th December happened to be Dr. Samahin's birthday, and an incident took place at or about that time. When the plaintiff married the first defendant she had given him a rolled gold watch. When first defendant left the house on the 19th of December, 1941, he found that this watch was missing, but in its place he found another watch which he 10 took away with him. It has now been proved that sometime previously the plaintiff had told the first defendant that she had seen at Hamer Bros. a nicer watch than the one owned by the first defendant and that she would like to buy that watch for him and give his old watch in part exchange. We find that on the 17th of December, 1941, that is three days before Samahin's birthday, the plaintiff purchased a rolled gold watch from Hamer Bros. It is said that this is probably the watch which was in the house when the first defendant left. Second defendant denies that the plaintiff gave him a watch. The question arises as to what happened to first defendant's gold watch? The witness from Hamer Bros. who 20 sold the gold watch to Mrs. Alles says that they do not take watches in part exchange.

First defendant having decided to leave his wife had to devise some method by which he and Hortense could leave Merlton without creating a scene. Had first defendant tried to take Hortense away from the house while the plaintiff was there, there would have been an uproar and possibly bloodshed. The first defendant therefore had recourse to a stratagem. He utilised his wife's partiality to the company of the second defendant as a means to an end. Second defendant being a 30 medical man was interested in the medical dance. He had invited the plaintiff and the first defendant to this dance in November. First defendant says he refused to go but the plaintiff was going. The first defendant therefore took advantage of this opportunity of leaving the house while she was away at the dance. I believe he kissed his wife good bye and gave her some money. I do not believe the story told by Merita and the others that first defendant had agreed to go and then suddenly let them down. I do not believe the story that the first defendant said he could not go because he had received a big brief from the Attorney-General which he would have to study that night. I hold that the first 40 defendant allowed the second defendant and the plaintiff and Merita to go to the dance and after they left, his lorry which was in attendance came to the house, and he went away taking with him his personal effects, and he made the entry 1D4 in the Information Book at Cinnamon Gardens Police Station.

It was while he was leaving the house that Alice came up and consoled with him and said that she was not surprised that things had come to this pass. I do not think the servants knew until Mr. Alles' lorry came to the house that he contemplated leaving.

Naturally, when the plaintiff returned after the dance she received a rude shock. I do not believe the story that Samahin when he drove these ladies home after a dance, always stopped the car at the gate and allowed them to walk into the house at the dead of night and perhaps in the rain. Any man taking a lady home after a pleasant evening would not grudge the extra minute or two involved in driving under the portico and seeing his friends safely into the house. It is said that the gates were closed as there were dogs; but there were servants sleeping in the verandah and, even if they did not awake when they heard the car approaching the gate, 10 the sounding of the horn would rouse them. Even if that failed the doctor could easily have got out of the car, opened the gate and driven in leaving it for the servants to lock up after him. I think Dr. Samahin drove up under the portico as he had always done and described by the servants.

I believe the plaintiff when she says that she nearly lost her reason when she found her baby gone. Merita who had come from Kandana for the dance got in touch with Noel de Costa and the distracted mother was taken quickly to Paul de Costa's house, and later brought back to Merlton.

20 A great deal has been said about the letter P2,—as to when it was delivered at Merlton, etc. I do not think that anything much turns on the point as to what the plaintiff's reactions were to that letter. It is noteworthy however that at a time when she did not know whether the first defendant had committed suicide or done away with the child, she made no enquiries at the one place where inquiries might have proved fruitful, namely, at the house of Mrs. Alles, senior. I would have expected her to get some neutral person to go to Laurentum and ascertain whether her husband and baby were there. There are contradictions in the evidence as to why Dr. Samahin called on the following morning after a late 30 night at the dance, and whether he came before or after P2 was received? I give the go by to these facts as I do not think they affect the decision of this case one way or the other.

It has been said that Mr. Alles delayed to come to Court. I do not think there has been any unnecessary delay. The matter had been placed in the hands of the lawyers, and evidence was filtering in. Witnesses had to be traced and examined. Evidence had to be obtained from Bandara-wela and we have Mr. Alles' statement that Mr. H. V. Perera, K.C., and Mr. E. G. Wickremanayake in view of the proximity of the birth of Joseph Richard advised him to hold his hand until the child was born.

40 It was suggested that while the plaintiff preserved all the letters of the first defendant, he on his part did not preserve his wife's letters. The question arises whether a man who has been married for several years would be so romantic as to preserve his wife's letters. I think while a wife might preserve the husband's letters, the converse would not always hold good, particularly in the case of a professional man who does not usually accumulate more waste paper than it is necessary to do. I believe Mr. Alles when he says that he did not preserve his wife's letters. I dis-

No. 39
 Judgment
 of the
 District
 Court
 27-2-43
 —continued.

believe the plaintiff's statement that when she unpacked her husband's trunk on his return from Jaffna she found all her letters to him in a shoe box. There was no reason for him to do so. The importance of these letters only became manifest after the trial started. At the time the first defendant received those letters there was no necessity to preserve them. A point has been made that in his answer to an application for discovery of documents, the first defendant stated in his affidavit that amongst the documents in his possession or power were "letters" from the plaintiff, including a letter dated 22-12-41. It is argued that therefore on the date that affidavit was sworn, first defendant had in his possession all the 10 letters written by his wife to him. Mr. Alles however has produced letters written by his wife to him. They are the letter 1D5 and some notes or chits written by her after this trouble arose about some dhoby clothes. It has been argued that these chits are not "letters". I cannot agree. A letter is a written communication passing from one person to another and these documents are "letters". I cannot therefore hold that the affidavit sworn by the first defendant contains a false statement, or that it proves that on the day he swore it he had all his wife's letters. The probabilities are that he had not.

Looking, therefore, at the accepted facts in perspective and as a whole 20 the conclusion is forced upon me that the acts of adultery alleged against the plaintiff and the second defendant have been proved beyond reasonable doubt.

It now remains to deal with the medical aspects of the case. It seems to me that this part of the case has been unduly magnified and protracted by both sides. Issue 7 so far as this case is concerned is comparatively of little importance. It invites the Court to declare the status of Joseph Richard as the legitimate son of Mr. & Mrs. Alles—see section 217 (G) of the Civil Procedure Code. Had the plaintiff in the prayer to her replication asked for such a declaration, it would have amounted to a misjoinder 30 of causes of action as laid down by the Full Court in 43 N. L. R. 272. Furthermore, Joseph Richard himself could not, either through a guardian *ad litem* or next friend, have intervened in this case and asked for such relief. This is a matrimonial action governed by special procedure in a special chapter of the Civil Procedure Code. The only other party who can come into a divorce case beside husband and wife is a co-respondent. The presence of issue 7 in this case therefore can only be justified (a) because it has some relevancy on the question of adultery, and (b) because it is relevant to the question whether first defendant should be ordered to pay maintenance in regard to Joseph Richard. The relevancy of the 40 legitimacy of Joseph Richard on the question of adultery is comparatively slight in view of the other evidence in the case, which enables the Court without having recourse to issue 7 at all to find whether there has or has not been misconduct. The plaintiff may have committed adultery with Dr. Samahin and yet Joseph Richard may be the first defendant's child. On the other hand, as second defendant's counsel put it, the Court may find that Joseph Richard is not Mr. Alles' child and yet not be Dr. Samahin's child.

The relevant provision of law governing this question is section 112 of the Evidence Ordinance. Omitting the unnecessary words that section reads as follows :—

No. 39
Judgment
of the
District
Court
27-2-43
—continued.

“ The fact that any person was born during the continuance of a valid marriage between his mother and any man..... shall be conclusive proof that such person is the legitimate son of that man..... unless it can be shown that that man had no access to the mother at any time when such person could have been begotten, or that he was impotent.”

10 Joseph Richard was born during the continuance of a valid marriage between the plaintiff and Mr. Alles. There is no suggestion that Mr. Alles is impotent. Therefore, an almost conclusive presumption arises that Joseph Richard is the legitimate son of Mr. Alles. The onus is accordingly shifted to Mr. Alles to show that he had no access to the mother at any time when Joseph Richard “ could have been begotten.” This onus admittedly is very heavy. The general rule is *Pater est quem nuptiae demonstrant*. Therefore where A married B on the 14th of September, 1932, and B bore a child on the 6th of November, 1932, and there was no other evidence, it was held that the presumption arose that A was the father
20 of the child—15 C. L. Rec. 35—see 2 Browne 195. It is for the party disputing legitimacy to rebut the presumption—because in every case where a child is born in lawful wedlock, the husband not being separated from the wife by a sentence of divorce, sexual intercourse is presumed to have taken place between them, until that presumption is encountered by such evidence as proves to the satisfaction of those who are to decide the question, that such sexual intercourse did not take place at any time *when by such intercourse the husband could according to the laws of nature, be the father of the child*—3 N. L. R. at page 14. This presumption is not to be rebutted by circumstances which only create doubt and suspicion—
30 25 N. L. R. at page 249. The evidence to rebut the presumption must be strong and satisfactory. The presumption is not lightly to be repelled. It is not to be broken in upon or shaken by a mere balance of probability. The evidence for the purpose of repelling it must be *strong, distinct, satisfactory and conclusive*—30 N. L. R. at pages 222, 223.

There are only two ways by which the presumption can be repelled, namely, by proof that the husband was impotent or that “ the man had no access to the mother at any time when such person could have been begotten.”

The question for decision then is—Had the father access to the mother
40 at any time when Joseph Richard could have been begotten,—there being no suggestion that Mr. Alles is impotent? Stress has been laid on the word “ shown ” as used in section 112. Reference to other sections of the Evidence Ordinance like 107, 108, 109, 110 indicate the same word has been used. In sections 107 and 108 the words “ shown ” and “ proved ” are both used together as in section 112. It is pointed out that while the

No. 89
Judgment
of the
District
Court
27-2-48
—continued.

word “prove” has been defined by the Evidence Ordinance, the word “show” has not. It is argued, therefore, that “to show” something is to do something more than “proving” something.

The ordinary dictionary meaning of the word “show” is “to display, reveal, disclose, *prove* or demonstrate”. The word “show” has thus been used as a synonym for “prove”. There are dicta in our Law Reports which indicate that the word “show” has been interpreted to mean “show by evidence” or “show by an admission”—see for example 31 N. L. R. at page 71, where section 109 of the Evidence Ordinance was considered. In that case it was admitted that the relationship of principal and agent 10 existed and it was held that therefore it had been shown to exist. In 37 N. L. R. at page 277, 39 N. L. R. at page 485 section 109 of the Evidence Ordinance was again considered. The position is made plain in 10 N.L.R. at page 144 where Hutchinson, C.J. in construing section 112 said “shown” of course means “proved by evidence”. In 25 N. L. R. 241 the Full Court held that “access” is a question of fact to be determined by evidence like any other fact. I therefore hold that the word “shown” in section 112 of the Evidence Ordinance means “proved by evidence” like any other fact. A fact is said to be “proved” when after considering the matters before it the Court either believes it to exist, or considers its 20 existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists—section 3 Evidence Ordinance. There is no different standard of proof called for under issue 7 than under any of the other issues except that under section 112 the onus lies particularly heavily on the first defendant to rebut an almost conclusive presumption.

With regard to the facts relating to this part of the case, we start with a letter which Dr. Samahin is alleged to have written to the first defendant at Jaffna somewhere about July, 1941. Second defendant denies that he wrote such a letter. We, however, find reference made to such a letter 30 in the documents P24 and P25 which were written by the first defendant to his wife from Jaffna. Under the rule in the Eliyatamby case P24 and P28 do not constitute legally admissible evidence against the second defendant, but are only admissible as between the plaintiff and the first defendant. I shall therefore consider them, keeping this distinction in mind. In P24 dated 11-7-41 Alles says “Please thank Sam ever so much for his letter of information. It is really very kind of him to have taken the trouble to write.” In P25 dated 15-7-41 1st defendant writes: “I am so glad to note that you are well enough to write, if only in pencil. Please lie very quiet and don’t attempt to do anything in the house. I am 40 glad to hear that you passed the stone as this is bound to relieve the pain considerably.....*I was very worried when I got Sam’s letter. That is why I rang up on Friday.*” As between the plaintiff and the first defendant what those passages mean is that on the 9th of July 1941 the plaintiff was taken ill. 1st defendant’s case is that the second defendant knowing that at this time the plaintiff was pregnant to him, and being a doctor and realising all the possible consequences, wrote to the first defendant asking him to come down to Colombo and that P24 and P25 refer to that letter,

First defendant's point is that had he come to Colombo in July and stayed with his wife during her early pregnancy although unknown to him, he would not now be able under section 112 to raise the question of legitimacy of the child, because he would have had "access to the mother at the time Joseph Richard could have been begotten." As between husband and wife, I hold as a fact that the second defendant did write to the first defendant, inviting him to come down. I also find on the facts that at that date both the plaintiff and second defendant knew that she was in early pregnancy. A reference to the dates when husband and wife came together leaves no room for any doubt, that *if* the plaintiff had in fact conceived either in June or July, Mr. Alles could not have been the father of the child, for the simple reason that the husband and wife never came together between 17-4-41 and 9-8-41. I further find that the documents P24 and P25 are not legal evidence against the second defendant, and the question so far as he is concerned must be decided on other evidence if there is any.

No. 89
Judgment
of the
District
Court
27-2-48
—continued.

I have given reasons for finding that the second defendant is not a trustworthy witness on any disputed question of fact. I have given reasons for holding that the first defendant is a credible witness. I believe the first defendant when he says in evidence that the second defendant did write suggesting he should come to Colombo in July.

At this date Merita was at Merlton. There was also the ayah Jane, who was plaintiff's personal maid and who would attend on her when ill. On the 9th of July plaintiff was taken ill with violent pain, and Dr. Frank Gunasekera was telephoned to. According to Merita, she first telephoned Dr. Samahin and then to Dr. Frank Gunasekera. According to the plaintiff she mentioned no doctor, she said in effect, "I am in very great pain send for a doctor." Be that as it may, when Dr. Frank Gunasekera turned up in response to the summons, Merita remained in the verandah and when he entered the sick room he found Dr. Samahin already there. Dr. Frank Gunasekera took no exception to the presence of Dr. Samahin because he was a medical man, although Dr. Gunasekera had not been called in as a consultant by Dr. Samahin. Dr. Gunasekera examined the plaintiff in bed both back and front. He has described what he did. She had to raise her night dress and expose the lower part of her abdomen and the doctor had to use his stethoscope and palpate or press various organs of the body in order to reach his diagnosis. There were three possible causes for the plaintiff's symptoms (1) Appendicitis, (2) A conception in the fallopian tube called an Ectopic gestation and (3) Renal colic. Dr. Gunasekera had to exclude two of them. Most of us have in the course of our lives undergone such an examination and know exactly what happens. A good part of the patient's lower abdomen would necessarily have come to view, particularly if the doctor, as he says he did, pressed that part of the abdomen where the appendix is. It is impossible, in my opinion, for a doctor to press that part of the exposed body of a female, even if covered with a sheet, without seeing the pubic regions. The plaintiff then had to turn round on her back and raise her night dress to enable the doctor to thumb her kidneys and to apply the stethoscope.

No. 39
Judgment
of the
District
Court
27-2-43
—continued.

During all this time, Dr. Samahin who had no business to be present, and who was not there in his capacity as a physician, remained although Merita the sister remained outside in the verandah. After Dr. Frank Gunasekera made his examination, he told his patient that her case was one of renal collic, that is the pain caused by the passage of a stone from the kidney to the bladder. Thereupon Dr. Samahin who had not examined the patient at all, and who could know nothing of the patient's actual ailment or of the results of Dr. Frank Gunasekera's examination asked Dr. Frank Gunasekera whether he might not be mistaken. Dr. Gunasekera says he was surprised that such a question should have been 10 addressed to him by Dr. Samahin. He ignored that question and in so doing he was acting according to strict medical etiquette. He prescribed P36 for the patient and left. Mr. Wickremanayake argues that Dr. Samahin who knew that the plaintiff was pregnant, being a doctor, and knowing that one of the causes giving rise to the symptoms which the plaintiff displayed was ectopic gestation, involuntarily interrupted Dr. Frank Gunasekera, because he realised that although the plaintiff's pain could not be due to appendicitis, it might nevertheless be due to a conception in the fallopian tubes—a very grave condition. Mr. Wickremanayake submits that if Dr. Frank Gunasekera had made a mis-diagnosis, 20 and it was afterwards found that this woman had in fact conceived in the fallopian tube and died in consequence, the position of Dr. Samahin might be serious because Mr. Alles could not possibly have been the father of the child which a postmortem would have disclosed.

Why did Samahin remain in the bed room when Dr. Frank Gunasekera was performing his examination? Is it not the experience of husbands that when the doctor is about to examine the wife the husband leaves the room. A wife has a sense of modesty, and she usually would not expose her private parts to a doctor even in the presence of a husband. Would not this also be so in the case of a brother or a son? Why then 30 did Dr. Samahin a perfect stranger—remain in that room? Why did the plaintiff expose her person in the presence of a stranger? He was a friend and not the doctor in attendance. The mandate which the first defendant gave him was to look after his wife surely did not extend to acts like this? This evidence also corroborates the evidence of the servant who said that Dr. Samahin used to sit on plaintiff's bed and talk to her. It also proves that the relations of these two people were such that the plaintiff thought nothing of exposing her body to the view of the second defendant. He was as great an interloper in this sick room as he was at Mrs. Jayewickrema's house on the night of the 18th April. I 40 think the reason why Dr. Samahin remained was because knowing that the plaintiff was pregnant, he wanted to be sure whether the plaintiff's ailment was ectopic gestation or not.

Dr. Frank Gunasekera visited his patient again on the 10th of July. He examined her and was told that the patient had passed a stone previous to his visit and it was shown to him. On this occasion Dr. Samahin was not present. Dr. Frank Gunasekera varied the prescription. On the 11th of July Dr. Frank Gunasekera saw his patient for the last time.

Dr. Frank Gunasekera says “ I did examine her on the 9th, 10th and 11th. I must have examined her as I usually do. I must have felt her and tapped her.” Dr. Frank Gunasekera cannot now remember whether plaintiff was menstruating on the 11th July. She did not tell him that she was. I think one can assume that if a woman who is ill in bed began to menstruate, she would use the ordinary appliances which women in that condition usually use, namely a girdle round the waist suspended from which would be the pad. A doctor who has to perform an examination of the lower part of the abdomen or the back of such a woman would usually see the girdle. Dr. Frank Gunasekera cannot remember whether the lady was menstruating. The plaintiff’s evidence is that she told her husband after his return that she had not had her menses in August and her husband told her to wait and see. On the 23rd October plaintiff called on Dr. Wickremasooriya at his house. Mr. Alles did not accompany her, and there is no proof that he knew of this visit. If there is one witness in this case about whom there is a consensus of opinion as to his honour, rectitude and veracity, it is Dr. Wickremasooriya. He holds the highest qualifications in obstetrics. He is an F.R.C.P. (Edin.) an F.R.C.S. (Edin.) and F.R.C.O.G. (London). All the experts including Dr. Thiagarajah agree that Dr. Wickremasooriya holds the highest possible qualifications in obstetrics and gynæcology. They are all agreed that he is a man of honour and a perfectly trustworthy man. While this case was in progress he had been approached by both sides, but realising the bitter nature of the contest that was about to start, he decided to hold no communication with either party and refused to make any statement until he was called into the witness box. He therefore comes before this Court as a perfectly disinterested, truthful, respectable and honourable expert witness and I so find. It is a matter for regret that in spite of this consensus of opinion, the plaintiff made an attempt to prove that Dr. Wickremasooriya is a dishonourable man who is capable of misleading the Court.

What this Court is trying to ascertain in this investigation is a specific fact, an unknown quantity X, namely the date on which Joseph Richard was conceived. I have in an earlier order held that the words “ could have been begotten ” mean “ could have been conceived.” The medical evidence proves that a human being can only be conceived once. Conception takes place when the spermatozoa from the male unites with the ovum of the female in the Fallopian Tube. That process cannot happen twice in the case of one individual. Even where there are twins it is one conception. Therefore what we are trying to find out in this case is that date and nothing else.

We can decide this point without the difficulties and perplexities which beset a doctor, who during a pregnancy is called upon by a patient to fix the date of delivery. The doctors point out that where a married woman is living with her husband with whom she is having normal marital relations, the medical expert cannot fix the exact date of conception with accuracy or precision. The reason is that because she is having normal intercourse, no medical expert can say whether any

No. 39
Judgment
of the
District
Court
27-2-43
—continued.

particular coitus in the course of a month or week resulted in the conception. The actual date the ovum is fertilised cannot be fixed with precision. But as the ovum only remains active for 36 hours and the sperm only for 48 hours this difficulty does not arise in this case. Therefore to a doctor endeavouring to fix the date of delivery the exact date of *conception* is usually always in doubt for both these reasons. Therefore medical science has been forced to adopt an admittedly unsatisfactory, difficult and somewhat uncertain method of computation, namely, based on what is known as the last menstrual period (L.M.P.) See *Midwifery* by Ten Teachers (6th Ed.) p. 30, 49. But if it can be ascertained or fixed 10 with certainty that conception could only have resulted from one single coitus, the L.M.P. method is not necessary. The date of the fruitful coitus being known the calculation of the delivery date for a *full term* child is comparatively easy in view of the limited life of the ovum and sperm. Such cases, however, are very rare, for the simple reason that married women are continually having intercourse with their husbands, and the date of the fruitful coitus cannot be fixed. Curiously enough this case is unique in that Alles could only have impregnated his wife on one day or possibly two days, namely, the 9th and 10th of August, 1941. It is proved beyond the shadow of a doubt that previous to the 9th of August, 20 1941, the only occasion on which the parties had intercourse was on the night of the 17th of April. It is quite impossible for Joseph Richard to have been conceived by the coitus in April because he was born on the 26th of March, 1941, which is over 11 months from the 17th of April. This is common ground in the case. It has also been proved beyond the shadow of a doubt that there was no possibility of husband and wife coming together between the 17th of April and the 9th of August. They certainly did not meet in June or July. First defendant was at Jaffna during the whole of that period while the wife was either at Bandarawela or at Colombo. We are therefore in the unique position of having a 30 single (and possibly two acts of union on consecutive days) which are fixed with precision.

Dr. Wickremasooriya and the other experts say that in cases where the actual date of a fruitful coitus is known, there is another method of computation which for practical reasons is not available in the majority of cases, namely, the Insemination Delivery Period (I.D.P.). The expert evidence establishes that the I.D.P. extends from 265 to 270 days, that is to say, if insemination or a fruitful coitus took place on a certain date a fully developed child would be delivered 265 to 270 days from that date. Similarly, if a fully developed child is born on a certain date it is possible 40 by calculating back to see if the date of insemination or conception falls at or about the date of the known single act of coitus. Joseph Richard was born on 26-3-42. Dr. Wickremasooriya delivered the child. At that date he was aware that a divorce case was about to start between the husband and wife. He says that he therefore took special notice of the child. He says that it disclosed all the features of a fully developed child, that is a child which had a full uterine development, *i.e.* a full insemination delivery period. He has given his reasons fully for forming this opinion.

They are not seriously challenged. But in view of a possibility suggested to Dr. Wickremasooriya that a child may be born prematurely, he is willing to add 21 days to the insemination delivery period. That is to say Dr. Wickremasooriya was of the view that a child born 21 days after the 26th of March, 1942, may still disclose the same features which he observed on the 26th of March. Adding 21 days to the 26th of March we reach the 16th of April. Now the unknown quantity which we are endeavouring to ascertain is the date of insemination or conception. Counting back 265 days from the 16th of April we get as the insemination date the *26th of July*. Deducting 270 days from the 16th of April we get the *21st of July*, but in either case the 9th of August, 1941, which is the only date on which Alles could have impregnated his wife, is excluded. I find as a fact that there was no premature delivery in this case at all, and that on the 26th of March when Joseph Richard was born he had reached full uterine development in his mother's womb. Counting back 265 days from the 26th of March we get to 4th July, 1941 and counting back 270 days from the 26th of March we reach the 29th of June. June and July fall within the period during which misconduct has been proved to have been committed between the plaintiff and the second defendant at Merlton. It falls within a period when Alles had no access to his wife. It confirms the view that in July, 1941, when Dr. Frank Gunasekera examined the plaintiff for renal colic she was already pregnant. It supports the view that in November when Dr. Wickremasooriya told Mr. Alles that his wife was in the fifth month of pregnancy, it was so in fact, because if she conceived at the end of June or the beginning of July she was in the fifth month in November. It also proves that in July, 1941, the plaintiff could not have menstruated because the medical evidence is that a woman cannot menstruate while pregnant, and that if she does bleed it is something other than menstruation. I must confess that many of the topics discussed by these doctors are difficult for a layman to follow ; but how is it possible for Mr. Alles to have produced a child with a full uterine development on the 26th of March by having intercourse with his wife on the 9th of August? I think the evidence proves, not only beyond reasonable doubt, but conclusively, that Mr. Alles could not be the father of the child that was born on the 26th of March. I hold that the time when Joseph Richard was begotten is between the 29th of June and the 4th of July, 1941, and the evidence equally conclusively proves that the husband had no access of any kind to his wife at that time. The only man who had access to her and did have intercourse with her at the time is the second defendant. As it is common ground that Mr. Alles and his wife slept together on 9-8-41 and the assumption by counsel on both sides that sexual intercourse took place, it is unnecessary to consider whether 25 N.L.R. 241 is in conflict with A.I.R. (1934) P.C. 49. I have no hesitation in holding on issue 7 that the child Joseph Richard is not the son of the 1st defendant. There was no access by Mr. Alles to his wife at the time when according to the laws of nature he could have begotten Joseph Richard.

No. 39
Judgment
of the
District
Court
27-2-43
—continued.

In view of the great length at which the medical evidence has been developed it is necessary that I should make a few further observations. I disbelieve the evidence of the plaintiff when she says that her last menstrual period was on the 12th of July. The evidence proves clearly that she is lying on this point. When she visited Dr. Wickremasooriya on the 23rd of October she was unable to give the date of her last menstrual period. Her being emaciated did not interfere with her memory. She had gone to find out whether she was pregnant and if so, when she would be delivered. Dr. Wickremasooriya assumed that she was a woman who was living with her husband at the time. He had no reason to know 10 that Alles had been continually absent at Jaffna since 17-4-41 till 9-8-41, and following the usual practice to enable him to compute according to her L.M.P. he asked her for her L.M.P. She then said she could not remember, and knowing the facts as we now do, it is probable that she could not remember. She was pregnant and had been pregnant from some date in June, and in October had forgotten the date because she had not had her monthlies for several months. Merita has been called to support the plaintiff's evidence that on the 12th of July, 1941, while the plaintiff was in bed she assisted her sister in changing the napkins. I have no hesitation in rejecting that evidence as false. The plaintiff was 20 in bed with renal colic for several days, but Merita never assisted her sister in regard to any other matter during that period. The plaintiff had to use a bed pan and any washing or sponging of the patient that had to be done would have to be attended to in bed. Yet Merita admits that she did not assist her sister with the bed pan or even in sponging her face or hands. The reason she gave was that being the elder sister she could not do it, an explanation which I do not understand. Yet she would have the court believe that on the 12th of July she helped the plaintiff to change her napkins, when menstruating, although the plaintiff had an ayah Jane who was available for that service. How does Merita remember 30 this date which the plaintiff herself could not give Dr. Wickremasooriya? It is clear that one of the reasons why Merita was called to face what counsel calls the humiliation of cross-examination, was to corroborate the plaintiff on this matter which the plaintiff's legal advisers considered was of vital importance. Their whole case stands or falls with this date. What is more, in November Mr. Alles caused Dr. Wickremasooriya to examine the plaintiff again. Even then the plaintiff's L.M.P. was not given. Dr. Wickremasooriya by independent examination without having recourse to the insemination delivery period told the husband that his wife was in the fifth month of pregnancy. In November and December 40 the relationship between the husband and wife rapidly deteriorated, and about the middle of December the plaintiff realised or should have known that there was going to be serious trouble. On the one hand the husband was beginning to give trouble, on the other hand the growing child in her womb was making her very anxious about the future. So again on the 17th of December she consulted Dr. Wickremasooriya. Strangely enough on this day she said that her last menstrual period was from the 11th to the 14th of July. I hold that these are false dates, with the object of

raising such a cloud as that which was sought to be created at this trial. If in October when Dr. Wickremasooriya asked her for her L.M.P. and she had honestly forgotten it, would she not have thought about it after going home, and made enquiries from Jane or Merita? When her attention was directed to it as the matter was important, would she not recall that Merita had removed a napkin while she was in bed? But there is something more. She told Dr. Wickremasooriya in December that her last menstrual period lasted from the 11th to the 14th July. She had forgotten that Dr. Frank Gunasekera had examined her body on the 10 11th of July. Now she has the hardihood to change the date and say that her last menstrual period was on the 12th of July. She has also tried to discredit the veracity of Dr. Wickremasooriya. This is on a par with her persisting in the allegation that Dr. Babapulle had been bribed, although her legal advisers had dropped it and eventually made a public apology.

No. 89
Judgment
of the
District
Court
27-2-43
—continu. d.

I do not think I am called upon, nor do I think it is necessary to go further into all the medical topics that have been discussed but there are some matters which must be referred to.

It will be seen that all the experts including Dr. Thiagarajah are 20 agreed that if it is held that the last menstrual period of 12-7-41 as given by the plaintiff is not accepted as a true date, then there is no difference or dispute and that this child could not have been conceived by any coitus with the 1st defendant.

I have no hesitation in holding that the plaintiff's story about irregular menstruation is false. The evidence of Dr. Wickremasooriya shows that before her first conception she consulted him for treatment to make her conceive. No history of irregular menses was then told him. Dr. Wickremasooriya did certain things with the result that the lady conceived. It is true that while she was in her first pregnancy she had 30 some bleeding but that is not irregular menstruation.

Dr. Thiagarajah says he was retained on the express understanding that he was not to be called as a witness. In the list of witnesses filed on 13-11-42 appears the names of Dr. R. F. Alles who obviously is a witness to facts and not a medical expert. Dr. Allan Rutnam was also a witness to facts and Drs. Wickremasooriya and Frank Gunasekera were both on the 1st defendant's list of witnesses as well. In the plaintiff's list of witnesses filed on the 2nd December no medical expert's name figures. In another list filed on the 4th December the name of Dr. Thiagarajah appears for the first time; but we have Dr. Thiagarajah's assurance that he agreed 40 to come into this case on the understanding that he would not give evidence. Nobody knew what Dr. Wickremasooriya was going to say, and it is clear that Dr. Thiagarajah was engaged to listen to the expert evidence and to suggest questions and propound theories to plaintiff's counsel which would help in the presentation of the case. In other words he was engaged as a medical advocate. While the trial was proceeding an attempt was made to call a Dr. Theobald, but for the reasons given in my order I had to reject him on a point of procedure. Therefore Dr.

Thiagarajah had to be called into the box. A perusal of his evidence will show that he has proved himself to be a thoroughly partisan witness who has attempted, perhaps unintentionally but in his zeal for the party he is siding, to twist scientific facts to suit his theories. It is a tedious task to give examples but I draw attention to the following: For example he has twisted science in order to suit his theories regarding irregular and regular menses, and on the question whether there can be menstruation without ovulation. He first said that menstruation did not depend on ovulation. He then changed that by saying "You may get menstruation without ovulation and ovulation without menstruation and that for 10 menstruation to take place ovulation may precede it." When he realized that the insemination delivery period might be an important factor in this case, he tried to trim down the effect of Dr. Wickremasooriya's evidence that the I.D.P. is from 265 to 270 days.

"Q. This lady cannot give you the menstrual cycle at all. Would you agree that I.D.P. is 265 to 270 days? A. On the presumption that ovulation takes place about the 15th or 14th to the 15th day, in terms of gestation delivery the interval would be 265 days on the presumption that ovulation takes place on the 14th to 15th day.

"Q. That 265 days is from the date of insemination? A. Yes. 20
The witness therefore agreed with Dr. Wickremasooriya. He then tried to change this:

"Q. So that when you gave the insemination labour period as 265 days what you mean is that the child will be in the womb from the date of fertilization to the date of delivery—the normal gestation being 265 to 270 days? A. There are about 8 days spent in the passage from the Fallopian tubes. That takes about 8 days. Even there it is all a matter of conjecture.

"Q. My question is this—has any recognised writer on this subject set out the I.D.P. as 265 to 270 days? A. No. 80

"Q. Will you show me any medical text book which gives the delivery period as the I.D.P.? A. I think the onus of proving that is on you.....

"Q. That was not my question—is it correct that every medical text book written by any recognised writer mentions the I.D.P. as 265 to 270 days? A. I have not gone through every text book, but a few text books, and I know they have mentioned that.

"Q. Can you mention a text book which supports what you say? A. The text books do not mention it but you are right, etc."

Then again 40

"Q. If there was a cycle like what the plaintiff has told us? A. I will find out when her last period was.

"Q. Question repeated. A. At any time you expect the baby between 250 and 265 days from the date of intercourse.

“Q. 250 to 265 days because you give an allowance always?
 A. Yes. Two days before expecting the period or two days after
 the expected period.....”

No. 39
 Judgment
 of the
 District
 Court
 27-2-43
 —continued.

“Q. The insemination labour period is 265 to 270 days—*why do
 you say 250?* A. For the simple reason that when you say 265
 days you presume ovulation could take place on the 15th day and
 I can say it can take place on any day of the cycle. When doctors
 talk of the I.D.P. they are talking of the period that lapses between
 the insemination *and delivery and has no relation* to the last menstrual
 cycle.”

10 Then he added “I say the insemination delivery period can be between
 278 and 252 days. I can quote authority for that.”

“Q. Did you say a little while ago that all recognised books say
 265 to 270 days? A. You said. I do not admit it is in the text
 books. That 265 to 270 days was correct you said and I said it is
 correct.

“Q. Otherwise you say you agree with that statement? A.
 That is as to the correctness of what you said.

20 “Q. Do you agree that that is the proper period? A. There
 is no authoritative statement on the subject—you are right in
 saying that.

“Q. What I want is this—you said in a normal case ovulation
 takes place on the 15th day and am I right in saying that the I.D.P.
 is 265 to 270 days? A. I said you are perfectly right.

“Q. Is it correct that it is generally accepted that the I.D.P. is
 265 to 275 days? A. No it is not generally accepted.”

30 Then he was asked whether he could show any text books in which the
 I.D.P. is set out as not being 265 to 270 days and the witness referred to
 Tweedy page 33. But it will be seen that this passage does not support
 the proposition which this expert was trying to maintain. It is obvious
 that when the insemination delivery period is utilised as a method for
 calculating the time when a child should be born; or knowing when the
 child was born, to calculate when it was conceived, the question of
 menstruation does not come into it at all. Dr. Thiagarajah himself says
 that the I.D.P. has no relation to the last menstrual cycle. The evidence
 reproduced above shows how the witness was displaying bias in favour
 of the side which had retained him.

40 Another question is with regard to the meaning of the words “pre-
 mature rupture of the membranes.” Ordinarily the membranes rupture
 at the end of the first stage of labour and ushers in the second stage.
 The child is contained in a sack containing the amniotic fluid, and the
 second stage of labour begins when the sack bursts causing the liquid to
 escape, affording a lubricant for the easy passage of the oncoming head.
 It is a medical axiom that if the membranes rupture before the os dilates,
 it is called a “premature rupture,” but Dr. Thiagarajah had the hardihood
 to suggest that the word “premature” as used in this connection, meant

No. 39
Judgment
of the
District
Court
27 2-43
—continued.

premature delivery, and had nothing to do with a stage in the labour. As to what “a premature rupture” of the membranes means is to be seen in the text books—see Eden and Holland Manual of Obstetrics 8th Edition pages 235 to 236. “When the dilation is complete the diameter of the cervical canal is nearly 4 inches, the presenting part occupies the whole of the cervical canal..... At this period the bag of waters usually ruptures spontaneously, and a certain amount of liquor amenii escapes, but the greater part is retained in the uterus—the presenting part filling the lower uterine segment and thus act as a ball valve. Sometimes, however, a rupture of the membranes occurs *prematurely* in the 10 first stage, or on the other hand it may be delayed until the second stage is considerably advanced.” If further authority is needed there is Munro on Obstetrics and Gynæcology 365. “As the unduly dilated bag is forced further and further down, it is unsupported, and it receives the full force of the interior uterine pressure during a pain. The result is, therefore *premature rupture* of the bag of waters.” It is, therefore quite clear that the masters of medical science mean a certain and definite thing when they talk about a “premature” rupture of the membranes, but Dr. Thiagarajah tried to twist and adapt scientific facts to suit the theory he was expounding. 20

Dr. Thiagarajah eventually admitted that it is the 12th July given by the plaintiff as her L. M. P., which was causing trouble in this case, and that if that date is suspect there would be agreement between all the doctors. In spite of severe cross-examination Drs. Wickremasooriya, Attygalle, Navaratnam and Frank Gunasekera are all agreed that this child could not have been conceived by a coitus on the 9th August.

Another matter of importance must be considered. In the course of the cross-examination of the first defendant’s experts two medical journals have been produced and articles contained therein have been used as authority. One of these articles by a doctor called Flumann was made 30 use of by Dr. Thiagarajah to discredit the evidence of Dr. Attygalle in regard to his evidence about irregular menstruation. No objection was taken at the time but it seems to me that the articles were wrongly admitted. For example—Dr. Flumann in his article describes how he distributed certain cards among nurses who were asked to mark on the cards the dates their periods came on, etc. The cards were then collected by the matron who returned them to Dr. Flumann, who has based certain conclusions about irregular menstruation on this data. Had Dr. Flumann been called into the witness box and attempted to give evidence of what he has stated in his article, he would have been stopped. The matron 40 would have to be called and each of the nurses who marked the cards would have to be called to speak about their menstruation, before Dr. Flumann could be allowed to express his opinion. Section 60 of the Evidence Ordinance makes this plain. It provides that evidence must be direct, that is to say if it refers to a fact the person who saw the fact must be called. If it refers to an opinion or to the grounds on which an opinion is held, it must be the evidence of the person who holds that opinion on those grounds. An exception is made in the case of the opinions of experts

“ expressed in any *treatise* commonly offered for sale ” and the grounds on which such opinions are held may be proved by the production of such *treatises*, if the author is dead or cannot be found or cannot conveniently be called. In the first place a medical journal cannot be called a “treatise.” The Ceylon Law Recorder or the Ceylon Law Journal cannot be called treatises although they contain valuable articles on legal matters. Pereira’s Laws of Ceylon on the other hand is a treatise. The author being dead it is authority. In the second place there is no proof that Dr. Flumann is dead or cannot be called, etc. Dr. Theobald the writer of the other
 10 article is not only alive, but is in Ceylon ; but he could not be called because a point of procedure stood in the way. I hold that what is stated in these articles are inadmissible and cannot be considered. They do not discredit the experts called by Mr. Alles.

No. 39
 Judgment
 of the
 District
 Court
 27-2-43
 —continued.

Has there been any negligence, condonation or connivance on the part of the first defendant which led to his wife’s misconduct ? If the Court finds that a husband has been guilty of such wilful neglect or misconduct of or towards his wife as has conduced to her adultery the Court is not bound to pronounce a decree in his favour—see section 602 of the Civil Procedure Code. There are a large number of English authorities on this
 20 point but I will only cite two of them. In *Dering vs. Dering* (1868) 37 L. J. P. & M. 52, it was laid down that misconduct conducing to adultery is not mere carelessness. Before a husband is found guilty of such conduct it must be proved that there was an intimacy between the wife and co-respondent of such a character as to be distinctly dangerous ; that the husband actually knew so much of the intimacy as to perceive the danger and that he either purposely or recklessly disregarded it and forbore to interfere. There is no such evidence here. In *Cunnington vs. Cunnington* (1859) 28 L. J. P. & M. 101 the husband was a clerk in a post office who opened certain letters and was convicted and sent to jail. During his
 30 incarceration his wife was maintained by her friends and relations and an affectionate correspondence subsisted between her and her husband. Three years later she formed a connection with the co-respondent and a child was born a year later. The wife did not inform her husband about this until sometime later. After his liberation from jail he sued his wife for divorce. It was held that although the adultery would in all probability never have taken place but for the absence of the husband, this absence was not such wilful neglect or misconduct as had conduced to the adultery so as to raise a case for the discretion of the Court. Such neglect or misconduct to come within the meaning of the section must be neglect or
 40 misconduct towards the other spouse on the part of the plaintiff. The similarity of the facts of this case to those of the present will be obvious. When a husband is in prison or has gone to Jaffna to prosecute at a long sessions how can he be held to be guilty of wilful neglect or misconduct if his wife who has been left behind in a house adequately staffed with servants, with a sister to look after her, chooses to misconduct herself ? How can it be neglect or misconduct in a husband to ask a loyal and trusted friend to look after his wife and sister-in-law while he was away ?

No. 39
Judgment
of the
District
Court
27-2-43
—continued.

What else is a man to do if he cannot take his wife with him? I do not think anything the first defendant did or did not do has conduced to her adultery with the second defendant.

The question of malicious desertion remains. In order to prove malicious desertion the plaintiff must establish on the part of the first defendant a deliberate, wholly unreasonable, definite and final repudiation of the obligations of the married state—35 N. L. R. 174. In 16 C. L. R. 206 a husband who had determined to get rid of his wife without just cause, in order to do so, took her to her mother's house and left her there promising to return and take her home but failed to do so. It was held that this 10 was malicious desertion on the part of the husband. It was laid down that it was not always the guilty party who leaves the matrimonial home. It is the party who intends to bring the cohabitation to an end and whose conduct in reality causes its termination that commits the desertion. Applying these principles to the facts of this case I find that the plaintiff's conduct after Mr. Alles returned from Jaffna was such which an ordinary husband could not be expected to tolerate. What the plaintiff stated in his letter P2 is correct. He repeatedly warned her regarding her continued association and intimacy with the second defendant. She persisted in that behaviour notwithstanding his entreaties to desist. The evidence 20 proves that this association between Mrs. Alles and Dr. Samahin had resulted in an open scandal because everybody was talking about it. The first defendant who even at that time loved his wife tried to tide over this difficult period by telling her to give up the second defendant urging as his reason that she was pregnant and that in view of the trouble during her previous pregnancy it was better that she should stay at home and thereby also live down the talk that was going on. Instead of reacting to his good advice she deliberately flouted him. Continuous quarrels and dissensions were the results. On one occasion she even deserted him, and when she found that in spite of his promise not to go to the dance he did 30 so, she set him at defiance and thereafter persisted in doing the same thing at the Silver Wings Carnival. When she was remonstrated with, she retorted that she would go with whom she liked, where she liked and when she liked. I am of opinion that conduct such as this amounts to constructive malicious desertion on the part of the plaintiff. She should have known that such conduct would make living with her impossible. I hold that her attitude was unreasonable and amounts to a repudiation of the obligations of the married state. As a matter of fact all this time she well knew that she had been an unfaithful wife. It is unnecessary to consider this question of malicious desertion further because it is now 40 merged in the graver offence of adultery on her part.

The question of damages remains. On this point the judgment of Mr. Justice MacCardie in *Butterwoth vs. Butterwoth* (1930) 89 L. K. P. D. 151 was cited by Counsel for the second defendant but he omitted to cite 27 N. L. R. 289 where the Supreme Court considered that case, explained Mr. Justice MacCardie's decision, and awarded damages against a co-respondent. In the present case we are face to face with a gross betrayal and treachery by a friend of the husband who implicitly trusted him.

That element was missing in 27 N. L. R. 289, which is clearly distinguishable from the facts of the present case. Undoubtedly the first defendant is entitled to receive compensation for the loss that has accrued to him by reason of the seduction of his wife by the second defendant. But the damages must not be exemplary or punitive but only compensatory. In assessing the damages there are two heads under which the matter must be considered (a) the actual value of the wife to the husband, and (b) the proper compensation which must be paid to him for (i.) the injury to his feelings, (ii.) the blow to his marital honour, and (iii.) the serious hurt to his matrimonial and family life.

The value of this wife to this husband is *nil*. She was nothing more than a butterfly, who put pleasure before everything else including her child. The only value which Alles had of plaintiff was that she was the mother of Hortense and ordered his meals and ran his household. I do not think any damages should be paid to the first defendant under this head. But the second head is more serious. The treacherous conduct of the second defendant has not only caused serious injury to the first defendant's feelings as a man, a father and a husband, but it has also dealt an irreparable blow to his marital honour and to his matrimonial and family life. The second defendant has aggravated the injury done to the first defendant by instructing his Counsel to cross-examine the first defendant on the footing that it was the first defendant's own misconduct with Mrs. Namasivayam that led to the fall of his wife from virtue. By his treachery the second defendant has broken up what otherwise was and might have continued to be a happy home. This has directly caused the first defendant to lose his wife's consortium and affection. He corrupted an otherwise respectable and decent woman and I think the damages under this head should be substantial. I have kept in mind the principle that damages should be compensatory and not exemplary or punitive and the fact that the income of the second defendant is Rs. 1,000 a month. It has however been pointed out that as a general rule the evidence of the adulterer's means is inadmissible, and that the amount of damages does not depend on whether the adulterer is rich or poor, because a poor man cannot by the plea of poverty escape from the actual injury he has caused ; nor can a rich man be compelled to pay more than proper compensation merely because he is rich. It has been held that any features of treachery, any grossness of betrayal and any wantonness of insult and the like circumstances merely add deeper to the husband's sense of injury and wrong, and, therefore call for a larger measure of compensation. It has also been held that the husband's whole conduct and affection should be tested as bearing directly on the question. In this case until trouble arose in November beyond all doubt Mr. Alles loved his wife very dearly and that he absolutely trusted her and stood by her, and it was only after November that his feelings towards her changed, and this again was directly the consequence of the injury done to him by the second defendant. The first defendant in this case claims Rs. 25,000 as damages. Regarding the question in the light of the above principles I think the proper compensation payable by the second defendant to the first defendant is Rs. 15,000.

No. 39
Judgment
of the
District
Court
27-2-43
—continued.

Let a decree be entered as follows :—

- (1) dismissing plaintiff's action against the first defendant ;
- (2) a decree nisi dissolving the marriage of the first defendant and the plaintiff on the ground of plaintiff's adultery with the second defendant to be made absolute on 28-5-43 ;
- (3) the first defendant is entitled to the custody of the child Hortense. The present arrangements for the plaintiff seeing the child will continue. The plaintiff shall not be at liberty to take or remove Hortense to any place not sanctioned by the father ;
- (4) it will be ordered and decreed that the second defendant will pay to the first defendant a sum of Rs. 15,000 being the damages sustained by the first defendant for the injury done to him by the second defendant.

The plaintiff and the second defendant will pay to the first defendant the costs of this action.

Sgd. R. F. DIAS,
District Judge.

27th February, 1943.

Pronounced in open Court in the presence of the Proctors and the parties.

Sgd. R. F. DIAS,
District Judge.

27th February, 1943.

No. 40.

Decree Nisi for Divorce entered by the District Court.

No. 586/D

DECREE NISI for Divorce " a vinculo matrimonii "

This action coming on for disposal before Dr. R. F. Dias, District Judge, Colombo, on the 27th day of February, 1943, in the presence of the Proctors on the part of the Plaintiff, and of the Proctors on the part of the Defendants : And it appearing to this Court that the Plaintiff is guilty of adultery.

It is ordered and Decreed that the marriage between the plaintiff Merle Alles *nee* de Costa and the first defendant S. Alles be set aside, dissolved and annulled by reason of the plaintiff's acts of adultery unless sufficient cause be shown to the Court why this Decree should not be made absolute on or before 28-5-43.

And it is further decreed that the first defendant according to the prayer of answer be entitled to and charged with the custody, care, and education of the child Hortense in the pleadings mentioned : Provided always that this order for the custody, care and education of the said child may at any time hereafter be modified, varied, or annulled upon

No. 40
Decree
Nisi for
Divorce
entered
by the
District
Court
27-2-43

sufficient cause shown ; the plaintiff be and she is entitled to see the child at Mrs. Allan Rutnam's bungalow or any other place agreed upon between the parties on any day the plaintiff pleases and for any length of time. The plaintiff not to be at liberty to take or remove Hortense to any place not sanctioned by the father the first defendant.

No. 40
Decree
Nisi for
Divorce
entered
by the
District
Court
27-2-43

It is further ordered and decreed that the second defendant do pay to the first defendant a sum of Rs. 15,000 being the damages sustained by the first defendant for the injury done to him by the 2nd defendant.

—continued

It is further ordered and decreed that the plaintiff's action against the 1st defendant be and the same is hereby dismissed.

It is further ordered and decreed that the plaintiff and 2nd defendant do pay to the first defendant the costs of this action.

Sgd. R. F. DIAS,
District Judge.

The 27th day of February, 1943.

No. 41.

**Petition of Appeal of the Added-Defendant to the
Supreme Court.**

No. 41
Petition of
Appeal of
Added-
Defendant
to the
Supreme
Court
9-3-43

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

20 S. C. No. 118/1944.

D. C. Colombo No. 586/D.

MERLE ALLES *nee* DE COSTA of Kandana..... *Plaintiff*

vs.

S. ALLES, Advocate of Ward Place, Colombo..... *Defendant.*

DR. T. S. M. SAMAHIN of Dambulla..... *2nd Defendant.*

And

DR. T. S. M. SAMAHIN of Dambulla *2nd Defendant-Appellant.*

vs.

1. S. ALLES of Colombo *1st Defendant-Respondent.*

2. MERLE ALLES *nee* DE COSTA of Kandana...*Plaintiff-Respondent.*

30 This 9th day of March, 1943.

THE PETITION OF APPEAL OF THE 2ND DEFENDANT-APPELLANT
appearing by Lawrence Benedict Fernando and Leslie Mercellus Fernando

No. 41
Petition of
Appeal of
Added-
Defendant
to the
Supreme
Court
9-3-43
—continued.

carrying on business in partnership under the name style and firm of L. B. & L. M. Fernando his Proctors, states as follows :—

1. The plaintiff-respondent sued the 1st defendant-respondent for a judicial separation on the grounds of malicious desertion and prayed *inter alia* for the custody of the children of the marriage to wit : Pauline Frances Hortense and Joseph Richard.

2. The 1st defendant-respondent filed answer, denying that he maliciously deserted the plaintiff-respondent. The 1st defendant-respondent alleged that the plaintiff-respondent committed adultery with the 2nd defendant-appellant on several occasions between the 15th February, 1941, 10 and 20th March, 1941, and between the 20th April, 1941, and the 20th August, 1941, at the 1st defendant-respondent's house "Merlton" in Gregory's Road in Colombo and that the plaintiff-respondent further committed adultery with the 2nd defendant-appellant on several occasions at Bandarawela between the 20th March, 1941, and 20th April, 1941. The 1st defendant-respondent further denied in his answer that he was the father of the child Joseph Richard and stated that he had no access to the plaintiff-respondent at any time when the said child could have been begotten. The 1st defendant-respondent claimed a sum of Rs. 25,000 as damages from the 2nd defendant-appellant. 20

3. The 2nd defendant-appellant filed answer denying that he had committed adultery with the plaintiff-respondent at either of the places or between the dates set out in the 1st defendant-respondent's answer and further stated that he at no time committed adultery with the plaintiff-respondent.

4. The parties went to trial on the following issues :—

- (1) Did the first defendant on or about 19th December, 1941, wrongfully and maliciously desert the plaintiff ?
- (2) If so, is the plaintiff entitled to a decree of separation *a mensa et thoro* ? 30
- (3) Is the plaintiff entitled to the custody of the children ?
- (4) To what alimony is the plaintiff entitled ?
- (5) What sum, if any, is payable to plaintiff for the maintenance of :
 - (a) the girl Hortense ?
 - (b) the boy Joseph Richard ?
- (6) Did the plaintiff commit adultery with the second defendant ?
 - (a) on various occasions between 15th February, 1941, and 20th March, 1941, at "Merlton," Gregory's Road, Colombo
 - (b) on various occasions between 20th April, 1941, and 20th August, 1941, at "Merlton" Colombo ? 40
 - (c) on several occasions between 10th April, 1941, and 14th April, 1941, at Bandarawela at the boarding house run by Mr. & Mrs. Outschoorn and elsewhere ?

(d) on the night of the 18th April, 1941, at Bandarawela at the house of Mr. Montague Jayawickrema ?

- (7) Is the child Joseph Richard not a son of the first defendant ?
 (8) If any part of the issue (6) or issue (7) is answered in favour of the first defendant is the first defendant entitled to—
 (a) to a divorce ?
 (b) to the custody of the child Hortense ?
 (9) If any part of the issue (6) is answered in the affirmative to what damages is the first defendant entitled to against the second defendant ?

10

5. After trial the learned Judge by his judgment dated the 27th February, 1943, dismissed the plaintiff-respondent's claim for a judicial separation and gave judgment in favour of the 1st defendant-respondent dissolving his marriage with the plaintiff-respondent on the grounds of her adultery with the 2nd defendant-appellant. The learned judge further held that the 1st defendant-respondent was entitled as against the 2nd defendant-appellant to damages in a sum of Rs. 15,000 and directed the plaintiff-respondent and the 2nd defendant-appellant to pay the 1st defendant-respondent his costs.

20 6. Being aggrieved by the said judgment the 2nd defendant-appellant begs to appeal to Your Lordships' Court on the following among other grounds that may be urged by Counsel at the hearing of the appeal :—

(a) The said judgment is contrary to law and against the weight of the evidence led in the case.

(b) The learned Judge it is submitted, erred in law when he directed the 2nd defendant-appellant to state his case and lead his evidence even before the plaintiff-respondent had given evidence in answer to the charges of adultery alleged against her by the 1st defendant-respondent. It is submitted the said direction deprived the 2nd defendant-appellant of the
 30 substance of fair trial and the protection of law and has resulted in a grave miscarriage of justice.

(c) It is submitted that the 2nd defendant-appellant has been gravely prejudiced by the refusal of the learned Judge to allow the 2nd defendant-appellant to call a witness from the office of the Superintendent of the General Hospital to prove a full statement of the leave taken by the 2nd defendant-appellant in the year 1941. It is submitted that it became necessary to call the said witness in view of the production in the re-examination by the 1st defendant-respondent through one of his own witnesses of the document 1D10 which was not listed among the documents
 40 of the 1st defendant-respondent. It is submitted that there were special circumstances within the meaning of section 175 of the C. P. C. to justify the calling of such evidence.

(d) It is submitted that the document 1D17 being an extract of the visitors' book of the Pelmadulla resthouse has been wrongly admitted in evidence and the contents thereof on which the learned Judge has relied have not been legally proved.

No. 41
Petition of
Appeal of
Added-
Defendant
to the
Supreme
Court
9-3-43
—continued.

(e) It is submitted that the evidence does not prove adultery at Bandarawela. It is impossible to hold on the evidence of the witness Schokman that adultery took place at the house of Mrs. Outschoorn on the 12th April, 1941. It is submitted that the learned Judge has misdirected himself in regard to the evidence of the stay of the 2nd defendant-appellant and the plaintiff-respondent at the house of Mr. Montague Jayawickrema.

(f) It is submitted that there is no evidence of misconduct at “Merlton,” Colombo. It is further submitted that the testimony of the servants called by the 1st defendant-respondent is of a contradictory nature, unsatisfactory and unworthy of credit and is of too general a nature to be acted upon to found a charge of adultery.

(g) It is submitted that evidence led by the 1st defendant-respondent on the question of the legitimacy of the child Joseph Richard can in no circumstances be used as proof of misconduct by the 2nd defendant-appellant.

(h) It is submitted that the learned Judge has misdirected himself in regard to the evidence on the question of damages and in regard to the application of the principles of law governing the award of damages. In any event the damages awarded are grossly excessive. It is submitted that the examination of witnesses at the trial cannot have any bearing on the quantum of damages, if any, to be awarded against a party.

Wherefore the 2nd defendant-appellant prays that Your Lordships be pleased to set aside the said judgment of the learned Judge and dismiss the claim of the 1st defendant-respondent as against the 2nd defendant-appellant with costs and to grant the 2nd defendant-appellant such other and further relief in the premises as shall seem fit to Your Lordships' Court.

Sgd. L. B. & L. M. FERNANDO,
Proctors for 2nd Defendant-Appellant.

No. 42.

No. 42
Petition
of Appeal
of the
Plaintiff
to the
Supreme
Court
10-3-43

Petition of Appeal of the Plaintiff to the Supreme Court.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

S. C. No. 119.

D. C. Colombo No. 586/D.

MERLE ALLES of “Fairlight”, Kandana *Plaintiff-Appellant.*

vs.

1. S. ALLES, Advocate of “Laurentum”, Ward Place,
Colombo *1st Defendant-Respondent.*
2. DR. T. S. M. SAMAHIN of Dambulla.....*2nd Defendant-Respondent.*

On this 10th day of March, 1943.

No. 42
Petition
of Appeal
of the
Plaintiff
to the
Supreme
Court
10-3-43
—continued.

THE PETITION OF APPEAL OF THE PLAINTIFF-APPELLANT abovenamed appearing by Merrill Wilson Pereira, Lionel Donald Stuwart Gunasekera, Corbert Edward Jayewardene and Edgar Dennis Samarawickrame practising in partnership under the name style and firm of Merrill Pereira & Gunasekera and their assistant Alfred Lionel Gunasekera her Proctors, states as follows :—

1. The plaintiff-appellant instituted this action against the 1st defendant-respondent for a separation *a mensa et thoro* on the ground of
10 malicious desertion on or about the 19th December, 1941.

2. The 1st defendant-respondent filed answer denying the malicious desertion and claimed in reconvention a decree for divorce *a vinculo matrimonii* against the plaintiff-appellant on the ground of adultery with the 2nd defendant-respondent, on several occasions between the 15th February 1941, and 20th March, 1941, and 20th April, 1941, and 20th August, 1941, at the plaintiff's house "Merlton", Gregory's Road, Colombo, and also between the 20th March, 1941, and 20th April, 1941, at Bandarawela. The 1st defendant-respondent further denied that the child Joseph Richard
20 no access to the plaintiff-appellant at any time when the said child could have been begotten.

3. The 2nd defendant-respondent filed answer denying the allegation of adultery.

4. In answer to interrogatories served by the plaintiff-appellant the said 1st defendant-respondent stated that the plaintiff-appellant committed adultery with the 2nd defendant-respondent at "Merlton", Gregory's Road, Colombo, between the 15th February, 1941, and 20th March, 1941, and again between 20th April, 1941, and 20th August, 1941, about
30 three or four times a week. Also between the 10th April, 1941, and 14th April, 1941, at the boarding house run by Mrs. Outschorn by day and during the same period at night at places which he was unable to specify and also on the 18th April, 1941, at Bandarawela at a place he could not then specify.

5. The plaintiff-appellant further moved for an order on 1st defendant-respondent to declare by affidavit all documents which were or had been in his possession or power relating to this action and the 1st defendant-respondent disclosed *inter alia* that he had letters from the plaintiff-appellant including a letter dated 22nd December, 1941. He objected to the production or inspection of any of the letters, except the
40 letter dated 22nd December, 1941, on the ground that it related solely to his case. After inquiry the District Judge made order directing the 1st defendant-respondent to amend his affidavit and on the amendment of the affidavit refused inspection of the documents.

6. The parties went to trial on the following issues :—

- (1) Did the first defendant on or about 19th December, 1941, wrongfully and maliciously desert the plaintiff?

No. 42
Petition
of Appeal
of the
Plaintiff
to the
Supreme
Court
10-3-43
—continued.

- (2) If so, is the plaintiff entitled to a decree of separation *a mensa et thoro* ?
- (3) Is the plaintiff entitled to the custody of the children ?
- (4) To what alimony is the plaintiff entitled ?
- (5) What sum, if any, is payable to plaintiff for the maintenance of :
 - (a) the girl Hortense ?
 - (b) the boy Joseph Richard ?

Mr. Wickremanayake accepts the issues and suggests :

- (6) Did the plaintiff commit adultery with the second defendant ?
 - (a) on various occasions between 15th February, 1941, and 10 20th March, 1941, at “Merlton”, Gregory’s Road, Colombo ?
 - (b) on various occasions between 20th April, 1941, and 20th August, 1941, at “Merlton”, Colombo ?
 - (c) on several occasions between 10th April, 1941, and 14th April, 1941, at Bandarawela at the boarding house run by Mr. & Mrs. Outschoorn and elsewhere ?
 - (d) on the night of the 18th April, 1941, at Bandarawela at the house of Mr. Montague Jayewickrema ?
- (7) Is the child Joseph Richard not a son of the first defendant ? 20
- (8) If any part of issue (6) or (7) is answered in the favour of the first defendant is the first defendant entitled :
 - (a) to a divorce ?
 - (b) to the custody of the child Hortense ?
- (9) If any part of issue (6) is answered in the affirmative to what damages is the first defendant entitled to against the 2nd defendant ?

Mr. Obeyesekera objects to issue (6) (c). He objects to the words “and elsewhere”. He wants to know what the “and elsewhere” means.

In answer to me Mr. Wickremanayake says “and elsewhere” means 30 that the alleged misconduct took place in Bandarawela at Mrs. Outschoorn’s place and elsewhere in Bandarawela.

Mr. Wickremanayake in further answer to the Court says that in addition to proving that misconduct took place in Mrs. Outschoorn’s house that the co-respondent and plaintiff went together at night under circumstances under which the Court will assume certain inferences.

Mr. Obeyesekere says the evidence should be confined to the statements made by Mr. Wickremanayake.

Mr. Wickremanayake assures Counsel that this will be so.

7. After trial the District Judge by his order dated 29th February, 40 1943, answered all the issues in favour of the 1st defendant-respondent and directed a decree to be entered accordingly. The District Judge

further held that the child Joseph Richard was not the child of the 1st defendant-respondent. Under issue (6) (c) he holds that misconduct took place at night on the 12th April, 1941, at the boarding house of Mrs. Outschoorn and that there was no proof of any other misconduct.

No. 42
Petition
of Appeal
of the
Plaintiff
to the
Supreme
Court
10-3-43

8. Being aggrieved by the said order the plaintiff-appellant appeals to Your Lordships' Court on the following among other grounds that may be urged by Counsel at the hearing of this appeal :—

—continued.

(a) The said judgment is contrary to law and against the weight of evidence in the case.

10 (b) The District Judge has misdirected himself in holding that the plaintiff-appellant had failed to discharge the burden on her of proving malicious desertion by the 1st defendant-respondent and has failed to consider all the evidence bearing on the question of malicious desertion as a whole. It is submitted that the letter P2 sufficiently established that the 1st defendant-respondent deliberately and with the intention of not returning left the plaintiff-appellant and that unless the 1st defendant-respondent was able to justify his desertion the plaintiff-appellant was entitled to the relief sought by her. The 1st defendant-respondent admitted in evidence that the letter was a complete repudiation of the
20 marriage tie and that he never intended to return to his wife when he left Merlton on the night of 19th December, 1941.

(c) It was admitted by the 1st defendant-respondent that at the time he left Merlton on the 19th December, 1941, he had no evidence whatsoever of any adultery on the part of the plaintiff-appellant with the 2nd defendant-respondent. His reasons for leaving her were (a) that she had hysterical outbursts, and (b) that she refused to obey his orders not to go out for dances in view of her state of health, she being admittedly pregnant at the time.

It is submitted that these reasons are utterly insufficient to justify
80 his desertion and that therefore at the time the plaintiff-appellant brought her action she was entitled to a decree for separation *a mensa et thoro* on the ground of malicious desertion.

It is submitted that on the evidence led in the case the conclusion is irresistible that the 1st defendant-respondent was in desperate financial straits and he deserted the plaintiff-appellant in order that he may with the assistance of his people, who had an invincible aversion to the plaintiff-appellant, pay his creditors.

It is also submitted that the District Judge has obviously misdirected himself on the law in holding that it was the conduct of the plaintiff-
40 appellant which amounted to constructive malicious desertion.

9. It is submitted that on the question of adultery the District Judge has misdirected himself both on the facts and on the law.

(a) The District Judge has approached this case, it is respectfully submitted, on the footing that the plaintiff-appellant was a sex-starved woman, a factor which in his opinion had a bearing on this case. There is no evidence to show that the plaintiff-appellant was sex-starved. On

No. 42
Petition
of Appeal
of the
Plaintiff
to the
Supreme
Court
10-3-43
—continued.

the contrary the adultery alleged was held to have been committed within two weeks of the 1st defendant's departure to Jaffna. It is submitted that the fact that a husband and wife are separated for a few months does not mean that the wife must naturally commit adultery especially in view of the fact that according to the District Judge himself no impropriety of any kind had been suggested as existing between the plaintiff-appellant and the 2nd defendant-respondent prior to 15th February, 1941.

(b) (i.) It is submitted that the District Judge's finding on credibility cannot be sustained in view of the reasons which he has given for believing or disbelieving the witnesses. It was stated in evidence by the plaintiff-10 appellant for example, that the 2nd defendant-respondent had been invited by the 1st defendant-respondent to supper on the night of Christmas Eve 1940 which was denied by the 1st defendant-respondent. The District Judge has disbelieved the evidence of the plaintiff-appellant and the 2nd defendant-respondent for the reason that it was improbable that a Malay gentleman would be invited to an essentially Christian festival at which the husband and wife would be more concerned with Santa Claus and the giving of pleasure to the children and the entertaining of the family circle. The District Judge had however previously expressed the opinion that the friendship between the 1st defendant-respondent and the 2nd defendant-20 respondent was something like that which existed between David and Jonathan—"A fine friendship with absolute loyalty and mutual trust between the two".

It is submitted that in view of that friendship there would be no improbability whatsoever in the 2nd defendant-respondent being invited even to a purely Christian feast and that the District Judge was wrong in rejecting the evidence of the plaintiff-appellant and the 2nd defendant-respondent on this point supported as it is by the evidence of two other witnesses.

(ii.) The case for the plaintiff-appellant and the 2nd defendant-30 respondent was that the 2nd defendant-respondent arrived at Bandarawela on the 11th April, 1941. The District Judge has disbelieved the parties and the witnesses on that point for the reason that the 2nd defendant-respondent had taken leave for the 10th and in his view it was improbable that the 2nd defendant-respondent would spend that day in Colombo when he had the opportunity of going to Bandarawela. The District Judge, however, has not paid sufficient attention to the admission of the 1st defendant-respondent that when he reached Bandarawela on the 11th April he was informed that the 2nd defendant-respondent had just arrived. This statement was made at a time when this action had not been foreseen. 40 It is therefore submitted that the District Judge's reasons for disbelieving the witnesses on this point are utterly groundless.

Having held for these reasons that the 2nd defendant-respondent was not in Colombo on the 10th April, 1941, the District Judge then went on to hold that Miss Ludowyke had committed perjury in the witness box, because she stated that the 2nd defendant-respondent and the 1st defendant-respondent came to her house on the 10th April, 1941. Having arrived

at that conclusion he proceeded to discredit her evidence by document 1D17 which was an extract from the Pelmadulla resthouse register. It is submitted that this document was not admissible in law, was not duly proved nor produced, and that there is no evidence in this case that the entries made in it are correct. It was pointed out to the District Judge that entries in resthouse registers were notoriously inaccurate and untrustworthy as is evidenced by another document in the case 1D1 produced for the purpose of proving that the 1st defendant-respondent was continuously staying in Jaffna from 1st February to 20th August, 1941, except on the 9th and 10th August, and 9th to 20th April.

No. 32
Petition
of Appeal
of the
Plaintiff
to the
Supreme
Court
10-8-48
—continued.

The District Judge has disbelieved witness Noel de Costa for the same reason. The witness had written a letter to his sister Merita, document P48A, on 10th April, 1941, in which he stated that he had seen the “ 1st and 2nd defendants flashing past in a car ”. Having held that the 2nd defendant-respondent was not in Colombo on that day the District Judge proceeds therefore to disbelieve Noel de Costa although he finds that Noel de Costa did see his brother-in-law, the 1st defendant-respondent, flash pass in a car and probably mistook one Mr. Weerasinghe for the 2nd defendant-respondent. No suggestion was made to Noel de Costa when he gave evidence that he had made such a mistake either by the District Judge or by Counsel for the 1st defendant-respondent.

10. It is submitted that the District Judge has failed to pay sufficient attention to certain important factors of the case :—

(a) As set out above the 1st defendant-respondent disclosed by affidavit that he had certain letters of the plaintiff-appellant which he objected to produce for inspection. At the trial he stated that all the letters written by the plaintiff-appellant to him when he was in Jaffna had been destroyed by him before he left Jaffna and that the only letters in his possession were two chits written by the plaintiff-appellant after he left her on the 19th December, 1941, with regard to some clothes which had been brought from the laundry. It is submitted that there is no doubt whatever on the evidence and in the circumstances of this case that the 1st defendant-respondent had destroyed these letters after his affidavit had been filed, for the reason that the production of those letters would clearly have established that the plaintiff-appellant had informed him of everything she had done during his absence from Colombo and would have proved conclusively the falsity of the charges brought against her. The District Judge has held that a letter is written communication “ passing from one person to another ” and that therefore those chits referred to by the 1st defendant-respondent are “ letters ” and that the affidavit of the 1st defendant-respondent is therefore true. The District Judge’s reason for holding that the 1st defendant-respondent had destroyed his letters is that a professional man would not accumulate more waste paper than is necessary. The District Judge has overlooked the fact that this was the first time since the marriage that the plaintiff-appellant and 1st defendant-respondent had been separated for so many months and it is submitted

No. 42
Petition
of Appeal
of the
Plaintiff
to the
Supreme
Court
10-8-43
—continued.

that while it is not improbable that he preserved the letters the evidence of the plaintiff-appellant herself is that she saw those letters in his suitcase when he came back from Jaffna.

It is further submitted that if they were the only letters in his possession there was no reason why the 1st defendant-respondent should strenuously object to their production so-much-so that the time of the District Judge was taken up in an inquiry as to whether the plaintiff-appellant was entitled to inspect them or not.

(b) It is also clear that when the 1st defendant-respondent made his allegation of adultery he had no evidence to support the charges. The 10 witnesses who gave evidence on this point were the servants Alice, Joslin and Pabilis and Dr. Babapulle. No evidence has been led of any adultery at Bandarawela except the evidence of Dr. Babapulle which firstly does not establish adultery and secondly it was not relevant to the issue framed in the light of the answers to the interrogatories. The 1st defendant-respondent or those helping him made inquiries in Bandarawela only as late as October, 1941, and his own evidence is that when he made a charge of adultery on the 18th April all that he knew was that the plaintiff-appellant had been away from the boarding house of Mrs. Solomons that night. Even this fact was not known to him when he filed his answer in 20 July. It is also clear from the evidence that the witnesses Alice, Joslin and Pabilis had made no statements to him at the time he filed his answer. The only statement made had been made by Alice to the effect that she was surprised that he had stayed so long in that house and that she would be willing to testify to it. It is clear on the evidence that Pabilis had been traced for the first time somewhere in September or October, 1942. It is also clear that he had no evidence of adultery in his possession at the time he is alleged to have instructed Counsel to draft a plaint against the plaintiff-appellant and that Pabilis' evidence was clearly not available to the 1st defendant-respondent at the time of the answer or the answer to 30 the interrogatories.

The District Judge has failed to consider and weigh the evidence on the direct and definite charge made by the plaintiff-appellant :

(i.) that the 1st defendant-respondent destroyed the letters written by her after the inquiry into the question of the discovery of documents because of his consciousness that the truth would operate against him ; and

(ii.) that the 1st defendant-respondent fabricated evidence and suborned witnesses in order to set up a false and malicious charge of adultery in order to meet the plaintiff's case of malicious desertion. 40

(c) It is submitted that there is not a scrap of evidence on which the District Judge could have held that the plaintiff-appellant had committed adultery at Bandarawela on the night of the 12th April and the 18th April. The evidence with regard to the 12th April is only the evidence of Dr. Babapulle. That evidence does not establish adultery. The case for the plaintiff-appellant and the 2nd defendant-respondent was that on the night

of 12th April they had gone to a dance and that from the dance they went back to Mrs. Jayewickrema's. The evidence was that they had left the dance at about midnight because it was a "washout". The District Judge holds that the party left before midnight and further that they did go to Mrs. Jayewickrema's but he holds that because Counsel for the plaintiff-appellant did not ask Mrs. Jayewickrema what time they returned from the dance the plaintiff-appellant therefore must in the interval have visited the house of Mrs. Outschoorn to commit adultery with the 2nd defendant-respondent. It is in evidence that the plaintiff-appellant had never before visited the house of Mrs. Outschoorn and there is no evidence to contradict her. The District Judge thinks it probable that the plaintiff-appellant could have been given directions as to how to go to the 2nd defendant's room and it is submitted that it is quite improbable and almost impossible for the plaintiff-appellant to have found her way into that room without inquiring and it is quite unlikely that she would have attempted to do so as alleged in the presence of all the people who according to Dr. Babapulle were in the dining room. It is also submitted that the evidence of Mr. Schokman which the District Judge has not rejected contradicts the evidence given by Dr. Babapulle. The main reason why the District Judge disbelieves the witnesses on this point is on an improbability of his own creation namely the dance being a "washout" the plaintiff and her party would have left the Hotel very much earlier than the witnesses have deposed to. The witness Mrs. Jayewickrema was on the list of witnesses for both the plaintiff-appellant and the 1st defendant-respondent but neither party had summoned her. The Court of its own motion issued a summons on Mrs. Jayewickrema and Counsel for the plaintiff-appellant, on his own responsibility called Mrs. Jayewickrema, who had admittedly made no statement of her evidence to the lawyers of any of the parties in the case. Her evidence in every particular supports the case for the plaintiff-appellant and it is submitted that the District Judge in the circumstances should not have held that on the night of the 18th April adultery was committed in her house. It was also suggested in the course of the evidence that Mrs. Jayewickrema was greatly piqued at the conduct of the 2nd defendant-respondent who uninvited stayed at her house on the night of the 18th. Mrs. Jayewickrema described 2nd defendant-respondent as a welcome guest and her conduct the following following day in inviting the 2nd defendant-respondent for breakfast as well as for lunch and sitting for photographs with the party clearly demonstrates that she in no way resented the conduct of the 2nd defendant the previous night.

The case for all parties was that arrangements were made at the instance of a Mr. Sri Namasivayam to form a party on the night of the 17th April at Merlton to go to Nuwara Eliya for a dance. Miss Ludowyke was invited and consented to join the party. A telegram was sent to Mrs. Jayewickrema informing her that two were coming for dinner and would stay over the night of the 18th. It is also admitted that in Colombo the arrangement was for Miss Ludowyke and the plaintiff to go to Mrs. Jayewickrema's. A change in the arrangement according to Miss Ludo-

No. 42
Petition
of Appeal
of the
Plaintiff
to the
Supreme
Court
10-3-43
—continued.

wyke, plaintiff-appellant, 2nd defendant-respondent and Merita was made after the plaintiff-appellant and Miss Ludowyke went into the Solomon's. The District Judge thinks that after that change was effected there was no occasion for the plaintiff to go to the Jayewickrema's that night and that she did so in all probability in order to commit adultery. Such an assumption is unwarranted and not supported by the facts of the case. The simple explanation is that in view of the fact that a telegram was sent, the plaintiff-appellant thought it proper that she should even alone go to Mrs. Jayewickrema's and enjoy the hospitality that had been asked for by wire. It is further submitted that no blame could be attached to 10 the plaintiff-appellant for permitting Miss Ludowyke to stay with Merita at the Solomons' for Mrs. Solomons, who is an elderly lady, had been informed of her presence in her house together with the Ayah, Joslin and Merita who is an old school friend of Miss Ludowyke. It is submitted further that no change in the programme as made in Colombo had been effected on the journey but at Mrs. Solomons' as Miss Ludowyke's bag was not taken out when the plaintiff-appellant and Miss Ludowyke got down from the car at Mrs. Solomons'. The evidence of the servant Joslin on this point is unsatisfactory and her evidence has been given the "go by" by the District Judge as she has contradicted herself on many points. 20

(d) So pressed was the 1st defendant-respondent to prove his charge of adultery that though no evidence whatsoever was led by him in regard to the visit to Nuwara Eliya and the doings on the night of the 19th but when the 2nd defendant-respondent in the witness box detailed the movements of the party at Nuwara Eliya it was specifically suggested to him that after the dance at about 4-30 in the morning the party came into the room of the witness Noel de Costa, and the plaintiff-appellant and the 2nd defendant-respondent slept together in a couch in that room while there were others in the room including Mr. Sri Namasivayam. The suggestion is entirely groundless and it is not even now known on whose 30 information the allegation of adultery on that night was made. It is suggested that Namasivayam the admitted friend of the 1st defendant-respondent would have at the earliest opportunity given information of the movements of the party on the 18th and 19th April but he has not been called by the 1st defendant-respondent to support the case for the 1st defendant-respondent, or contradict the case for the plaintiff-appellant in these and other material particulars.

(e) (i.) As regards the acts of adultery in Colombo the witnesses who spoke to them were Alice, Joslin and Pabilis. Witness Josline was employed by the plaintiff-appellant about the 10th March, 1941, a few days 40 before her departure to Bandarawela for a holiday on the 20th March. She in no unmistakable terms admitted in the course of her evidence that she was not aware of any acts of impropriety between the plaintiff-appellant and the 2nd defendant-respondent prior to their holiday at Bandarawela. The witness Pabilis was employed by the plaintiff-appellant in June, 1941, after her return from Bandarawela. So that it is suggested that the acts of adultery alleged to have been committed between 15th February and

20th March rests on the uncorroborated testimony of the witness Alice who was the cook. As against her evidence there is the evidence of Noel de Costa who lived at Merlton till about the 10th March and of Merita, the sister of the plaintiff-appellant, who definitely stated that to their knowledge the 2nd defendant-respondent never occupied the guest room at Merlton during the day or stayed the night at Merlton. It is inconceivable that a brother in the position of Noel de Costa and a young unmarried sister would have been a party to the scandalous conduct deposed to by the witness Alice during the period 15th February and 20th 10 March.

(ii.) In regard to the period 20th April and 20th August, 1941, the witnesses Alice and Pabilis both speak to the frequent visits by the 2nd defendant-respondent to Merlton during the day and in the night and the witness Joslin speaks to a particular incident of an afternoon when the plaintiff-appellant addressed her from the guest room when she was taking the child in the perambulator while the 2nd defendant-respondent was sleeping in the guest room. It is suggested that it is not possible to disprove particular isolated incidents of this kind and that the evidence of Joslin on the whole is untrustworthy and unreliable and should not be 20 acted upon. The witness Pabilis was on his own admission shown to be an untrustworthy witness in that he had contradicted the evidence of Dr. Allan Rutnam whose evidence Counsel for the 1st defendant-respondent himself did not challenge. Further Pabilis who at some time or the other had been employed by Dr. Rutnam was prevailed upon to state that the plaintiff-appellant during January and March, 1942, slept in the bungalow of Dr. Rutnam and that on one occasion the 2nd defendant-respondent called during the absence of Dr. & Mrs. Rutnam and took the plaintiff-appellant out and returned before Dr. & Mrs. Rutnam. The District Judge believes the evidence of Pabilis because the document 1D13, which 30 are extracts from the telephone register shows that the plaintiff-appellant telephoned to the 2nd defendant-respondent at Dambulla on at least two occasions. The District Judge had obviously overlooked the fact that telephone messages were given in May and that therefore the telephone register could not afford corroboration of the evidence of Pabilis and further Pabilis admitted that after leaving the service of the plaintiff-appellant in October or November, 1941, he was doing nothing in his village in the Kalutara district till he got employment at at Campbell Cafe at Bombuwella in January, 1942, where he was employed till the time he gave evidence in this case. It is therefore respectfully submitted 40 that the District Judge should have rejected entirely the evidence of Pabilis as a suborned witness who was not in the employ of Dr. Rutnam at the relevant period. If he could have deliberately and demonstrably given false evidence on this point there is no reason in view of the circumstances under which he was discovered and brought into the case why his evidence should not be rejected in its entirety. In the result it is submitted as regards this period too we are left with the evidence of the witness Alice. The 1st defendant-respondent took no statement from this witness prior to the 31st December, 1941, although he had every opportunity of doing

No. 42
Petition
of Appeal
of the
Plaintiff
to the
Supreme
Court
10-8-43
—continued.

so especially as in letter P2 to the plaintiff-appellant the 1st defendant-respondent had stated that immediate steps were being taken for the dissolution of the marriage. No effort admittedly was made to obtain a statement from this witness or any other witness till after the institution of this action by the plaintiff-appellant. In the circumstances it is submitted that Alice too is a witness whose evidence was procured to serve the necessities of the case.

(iii.) The District Judge in his judgment states that the plaintiff-appellant should have called her father Paul de Costa to contradict the witness Pabilis and in order that he may be cross-examined regarding his 10 married daughter's association with the 2nd defendant-respondent. The District Judge himself finds that in regard to the incident spoken to by Pabilis "Paul de Costa observed nothing unusual" and it is clear that Paul de Costa's objections referred to by the District Judge were not to the association of his married daughter *alone* but to the association of his daughter *and* son-in-law with the 2nd defendant-respondent. In the circumstances it is submitted that there was no need to call Paul de Costa and the District Judge was wrong in drawing an inference adverse to the plaintiff.

(iv.) It is respectfully submitted that in the circumstances the District 20 Judge was not entitled to hold that adultery was committed by the plaintiff appellant with the 2nd defendant-respondent at Merlton during the periods mentioned.

11. The learned District Judge in the course of his judgment says that "had the only evidence in this case been the two alleged adulterous incidents at Merlton, and had the case resolved itself into a contest on the one side between the evidence of domestic servants, and that of the plaintiff and 2nd defendant and Merita on the other, and there were no other circumstances, the Court might hesitate to base a finding of misconduct against people in the position of the 2nd defendant and this 30 plaintiff."

If as has been submitted there is no evidence on which the Judge could have held that there was misconduct at Bandarawela then on the Judge's own reasoning contained in the above passage his finding on the question of adultery in Colombo is necessarily wrong.

12. (i.) It is submitted on the question of issue (7) the District Judge has clearly misdirected himself in law. Although the District Judge has referred to authority which states that the presumption of legitimacy is not to be shaken by mere balance of probability he has decided this issue purely upon the improbability of a fully developed child being born on 40 the 26th March, 1942.

(ii.) It is submitted that the presumption created by section 112 of the Evidence Ordinance cannot be rebutted only by showing that it is physiologically impossible for this child to have been conceived on that date. The evidence of the doctors makes it quite clear that such a conception was possible although in their opinion not probable. The method adopted by the District Judge of counting back 265 to 270 days from

26th March and fixing the period of insemination between the 29th June and 4th July is not only not a negation of the presumption created by the Evidence Ordinance but also unscientific as explained by Dr. Wickremasooriya in his evidence.

(iii.) That the conception-delivery period lasts 265 days to 270 days is based upon the theory known as the Ogino and Knaus theory which states that conception invariably takes place between the 10th and 15th day of the inter menstruum. This theory is not generally accepted in the medical world, for clinical experience has shown that conception can take place on any date of the inter menstruum. This is supported by Drs. Wickremasooriya, Frank Gunasekera and Thiagarajah.

(iv.) It is submitted that if the plaintiff-appellant had her last menstrual period on the 12th July, 1941, as she says she had, it is agreed by Doctors Wickremasooriya, Frank Gunasekera, Thiagarajah and Navaratnam that a child could have been conceived on the 9th August and born on the 26th March exhibiting the characteristics of a mature child.

(v.) The evidence of Dr. Attygalle, that conception can take place only during what is known as the mid-period of the inter menstruum, is demonstrably incorrect and contrary to the clinical experience of the numerous authorities cited and unsupported by the evidence of Drs. Thiagarajah, Wickremasooriya and Frank Gunasekera.

13. (i.) The plaintiff-appellant's case was that she had her last menstrual period on the 12th July. This is supported in the first place by the evidence of Merita whose evidence there is no reason to doubt and in the second place by the independent examination of Dr. Wickremasooriya who found physical characteristics fixing the first day of the last menstrual period about the 12th July. He examined the plaintiff-appellant on the 23rd October, on the 15th or 22nd November, and on the 17th December. From all observations made by Dr. Wickremasooriya at all these examinations he stated that he inferred that her last menstrual period was between the 11th and 14th July. All the doctors agree that if Dr. Wickremasooriya had made correct observations the last menstrual period should fall about the 11th and 14th July. This evidence conclusively corroborates the statement of the plaintiff-appellant and her sister that about the 12th July the plaintiff-appellant had her last menstrual period and the District Judge was entirely wrong in ignoring the evidence of the doctors and rejecting the evidence of the plaintiff-appellant that she had her last menstrual period on the 12th July.

The District Judge has made a point of the fact that the plaintiff-appellant did not mention to Dr. Wickremasooriya the date of her last menstrual period till the 17th December. Dr. Wickremasooriya's own evidence is that on the first occasion she was looking ill and emaciated and that he did not press her. There was no reason for the plaintiff-appellant to give a date that was false. That some date was given on the 23rd October to Dr. Wickremasooriya, which apparently did not accord with his observations, is shown by the fact that he put down a query in his card on that date. It is clear from the statement she admittedly had

No. 42
Petition
of Appeal
of the
Plaintiff
to the
Supreme
Court
10-3-43
—continued.

made that the 1st defendant-respondent had a one-day period on 11th August and there is no reason in the circumstances why the evidence of the plaintiff on this point should have been disbelieved by the District Judge and that he should have held that the plaintiff-appellant flagrantly contradicted the evidence of Dr. G. A. Wickremasooriya.

Dr. Wickremasooriya clearly and definitely states that he fixed the menstrual period between the 11th and 14th July not only on the statement of the plaintiff-appellant *but on the strength of his own observations.*

(ii.) If, as a matter of fact, she had her menstrual period on the 12th July or thereabouts the authorities and the experts including Drs. Wickre- 10 masooriya, Thiagarajah and Frank Gunasekera are agreed that conception could possibly though not probably have taken place on the 9th August. They are also agreed that the expected date of delivery of the child would be the 18th April. Dr. Wickremasooriya and Dr. Attygalle are agreed that in the ordinary course of things the child does not arrive on the expected date but due to individual variations may be born a fortnight or in exceptional cases 3 weeks earlier than the expected date. This child Joseph Richard, though expected to arrive on the 18th April, was born on the 26th March, which is about 3 weeks before the expected date. Even without a premature rupture of the membranes as is testified to by 20 Dr. Wickremasooriya, Joseph Richard may well have been born on the 26th March. It is submitted that the child born on the 26th March would be according to their evidence necessarily a fully developed mature child as is deposed to by Dr. Wickremasooriya.

Dr. Wickremasooriya in his evidence admitted that this child would have had a notional foetal existence of 258 days at the time of birth and would therefore have been in the 9th calendar month and 10th lunar month. This was agreed to by all the doctors. Taylor on Medical Jurisprudence at page 47 Vol. 11 9th Edition states that the general opinion is that an eight months child is not with any certainty to be distinguished 30 from one born at the ninth month. This too was accepted by all the doctors. It is therefore submitted that the child Joseph Richard being in the 9th month of its notional foetal existence would bear the characteristics deposed to by Dr. Wickremasooriya in his evidence.

(iii.) It was argued that where the date of fruitful coitus, and therefore the date of conception, is known the foetal life of the child is computed from that date.

It is submitted that this is wrong in law and in fact, that the life of a child whether the date of fruitful coitus is known or not must be measured from the first date of the last menstrual period as set out in the case of 40 *Clarke vs. Clarke* (1939) 2 All E. R. 59. If that is so then it is submitted that the child Joseph Richard was a fully developed child.

Besides well known authorities such as Johnstone, in his text book on Midwifery, definitely states that a full term child can be born after 240 days of foetal existence calculated from the first date of the last menstrual period.

14. The District Judge states in the course of his judgment " In spite of severe cross-examination Drs. Wickremasooriya, Attygalle, Navaratnam and Frank Gunasekera are all agreed that this child could not have been conceived by a coitus on the 9th August ". It will be clearly seen from their evidence that this statement is incorrect, except in the case of Dr. Attygalle. The evidence of the other doctors is definite and in their opinion conception on the 9th August is possible but unlikely.

No. 42
Petition
of Appeal
of the
Plaintiff
to the
Supreme
Court
10-3-48
—continued.

15. The District Judge has also made a point of the fact that the date of her last menstrual period as given by the plaintiff to Dr. G. A. Wickremasooriya was the 11th to 14th July. He holds that this is contradicted by the evidence of Dr. Frank Gunasekera who examined the plaintiff-appellant on the 9th, 10th and 11th July when she was suffering from Renal Colic. Dr. Gunasekera does not state that his examination of her on the 11th July was such as to disclose to him the fact whether or not she had her periods. He merely says that he must have felt her and tapped her.

16. It is admitted that on the 9th July when Dr. Gunasekera was summoned the 2nd defendant-respondent was in plaintiff-appellant's room and remained there when Dr. Gunasekera examined her. The District Judge finds that the 2nd defendant-respondent remained in the room because the plaintiff-appellant was already pregnant by him and because he wanted to make sure that her complaint was no ectopic gestation. It is submitted that the reasons given by the Judge for so holding are unsustainable and does not bear examination. Dr. Gunasekera's own evidence is that the plaintiff-appellant had partially to undress and that he had to examine her next to the skin. The District Judge on the evidence visualized what sort of an examination the doctor would make and it is submitted has misdirected himself completely as to why the 2nd defendant-respondent was present on that occasion. It is submitted that if, as the District Judge finds, this child had been conceived between the 28th June and 4th July no power on earth much less the 2nd defendant-respondent could on the 9th July have discovered or become aware as to whether the plaintiff-appellant had an ectopic gestation or any gestation at all!

17. The District Judge, it is submitted has misconceived the presumption of legitimacy that arises under section 112 of the Evidence Ordinance and has allowed evidence of other facts besides non-access to influence him in holding the presumption rebutted in spite of the express prohibition in section 4 of the Evidence Ordinance.

18. It is also submitted that the District Judge is wrong in refusing the application made by the plaintiff-appellant to call Dr. Theobald who was admitted by Dr. Wickremasooriya to be an authority on this subject. An article written by Dr. Theobald to the British Medical Journal was admitted in evidence but when Dr. Attygalle was giving evidence it transpired that Dr. Theobald was in the Island. This fact was not known to the plaintiff-appellant or her legal advisers and on the following day a motion was filed in Court with notice to parties moving to call Dr. Theobald. This motion was allowed and summons was accordingly issued but when

No. 42
Petition
of Appeal
of the
Plaintiff
to the
Supreme
Court
10-3-48
—continued.

Counsel for plaintiff-appellant proposed to call Dr. Theobald objection was taken and it was upheld on the ground that Dr. Thiagarajah was aware that Dr. Theobald was in the Island.

It is submitted that Dr. Theobald was going to give evidence as an expert and that no prejudice would have been caused to any of the parties if his evidence had been permitted to be led and that moreover on an issue so grave as this where the legitimacy of a child was in question the District Judge should have permitted this important evidence to be led. This refusal has resulted in the case for the plaintiff-appellant being gravely prejudiced.

10

19. The District Judge's strictures on Dr. Thiagarajah are unwarranted in the circumstances of the case, and unjust. It is submitted that the District Judge has not followed the implications of the medical evidence. The grounds on which he passes strictures on Dr. Thiagarajah are as baseless as they are unsustainable as for example :

(a) When the record shows that Dr. Thiagarajah referred to a paragraph on page 33 of Tweedy, it was pointed out in the course of the case that the doctor referred to a *graph* at page 33 which shows that conception had taken place on the last date of the inter menstruum. Moreover no paragraph on page 33 refers to the question of the insemination-delivery 20 period.

(b) The District Judge in his judgment states " That Dr. Thiagarajah said that menstruation did not depend on ovulation and that he therefore changed that by saying you may get menstruation without ovulation and ovulation without menstruation and that for menstruation to take place ovulation may precede it ". It is not understood how this evidence is contradictory or one statement is a change from the other. It is further submitted that Dr. Thiagarajah's opinion on this ground is corroborated by the other medical witnesses and is in accordance with known medical experience.

80

(c) Dr. Thiagarajah explained premature rupture of the membranes as rupture before the onset of labour—that the plaintiff-appellant may have given birth to the child on the 26th March about 3 weeks before the expected date owing to a premature rupture of the membranes. This opinion was based on the opinion of Dr. Wickremasooriya who stated that he was informed that there was a premature rupture of the membranes which he confirmed by examination and that therefore the delivery before the expected date may be due to such a rupture. Dr. Thiagarajah further explains that a premature rupture of the membranes was a rupture before labour commenced. The District Judge stated Dr. Thiagarajah had the 40 hardihood to suggest that the word premature as used in this connection meant premature delivery and had nothing to do with the stage of labour."

It is submitted that it is for reasons such as these that Dr. Thiagarajah has been accused of twisting scientific facts to support a theory.

20. In the circumstances it is submitted that the 1st defendant-respondent has failed to discharge the burden of rebutting the presumption created by section 112 of the Evidence Ordinance and the District Judge's finding on this issue is wrong.

21. The order of the District Judge that the 1st defendant-respondent should have the custody of the child Hortense is wrong in the circumstances of this case and in view of the age of the child it is submitted that the mother, the plaintiff-appellant, should have the custody of the child. In any event the order that the mother when she gets access to the child should not be at liberty to take or remove Hortense to any place not sanctioned by the father is unconscionable and vexatious and an unwarranted curtailment of the rights of a mother.

Wherefore the plaintiff-appellant prays that Your Lordships' Court may be pleased—

- (a) To set aside the judgment of the District Judge.
- (b) To enter decree granting the plaintiff-appellant a separation *a mensa et thoro* from the 1st defendant-respondent on the ground of malicious desertion.
- (c) To grant the plaintiff-appellant custody of the child Hortense and of the child Joseph Richard.
- (d) To order maintenance in respect of the children Hortense and Joseph Richard.
- (e) To order permanent alimony in such sum as to Your Lordships' Court may think fit.
- (f) To enter a decree dismissing the 1st defendant-respondent's prayer for a divorce *a vinculo matrimonii*.
- (g) If necessary, to permit the plaintiff-appellant to call Dr. Theobald of Craig Appin, Dickoya, on issue No. (7).
- (h) To grant costs.

and for such other and further relief in the premises and not herein specifically prayed for as to Your Lordships' Court may seem meet.

MERRILL PEREIRA & GUNASEKERA,

Sgd. C. E. JAYAWARDENA,

Partner,

Proctors for Plaintiff-Appellant.

Settled by :

E. B. WICKREMANAYAKE.

M. T. DE S. AMERASEKERA,

Advocates.

No. 43.

Decree Absolute entered by the District Court.

DECREE ABSOLUTE.

The above Decree Nisi coming on for final disposal before Dr. R. F. Dias, District Judge, Colombo, on the 28th day of May, 1943, and the time allowed in the said Decree Nisi having elapsed since the entering of the Decree Nisi and no cause having been shown to the contrary it is ordered and decreed that the Decree Nisi be and the same is hereby made absolute with effect from 28th May, 1943.

Sgd. R. F. DIAS, 10
District Judge.

The 28th May, 1943.

No. 44.

Judgment of the Supreme Court.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

S. C. Nos. 118 & 119/1944

D. C. (Final) Colombo 586/Divorce.

Names of Parties :

MERLE ALLES.....*Plaintiff-Appellant in Appeal No. 119.*
Plaintiff-Respondent in Appeal No. 118.

vs. 20

J. S. ALLES.....*First Defendant-Respondent in both Appeals.*
DR. T. S. M. SAMAHIN...*Second Defendant-Appellant in Appeal No. 118*
Second Defendant-Respondent in Appeal No. 119

Coram : WIJEYWARDENE & CANNON, J.J.

Argued on : April 23, 24, 25, 26, 27 & 30, 1945. May 1, 2, 3, 4, 7 & 10, 1945.

Counsel : N. NADARAJAH, K.C., with E. B. WIKRAMANAYAKE, H. W. JAYEWARDENE and G. T. SAMARAWICKREME for the plaintiff-appellant in S. C. No. 119 and plaintiff-respondent in S. C. No. 118. 30

No. 43
Decree
Absolute
entered
by the
District
Court
28-5-43

No. 44
Judgment
of the
Supreme
Court
11-5-45

N. K. CHOKSY, with IVOR MISSO and J. G. T. WIJERATNE
for the second defendant-appellant in S. C. No. 118 and
second defendant-appellant in S. C. No. 119.

No. 44
Judgment
of the
Supreme
Court
11-5-45
—continued.

H. V. PERERA, K.C., with E. G. WIKRAMANAYAKE,
C. J. RANATUNGA and G. THOMAS for the first defendant
respondent in both appeals.

Delivered on : May 11, 1945.

WIJEYWARDENE, J.

The plaintiff instituted this action on April 2, 1942, against the first
10 defendant asking for a decree of separation *a mensa et thoro* on the ground
of malicious desertion and claiming alimony and the custody of her two
children Hortense and Joseph Richard.

The first defendant filed answer denying that he deserted the plaintiff
maliciously and pleading that the plaintiff committed adultery with the
second defendant. He denied that he was the father of the younger child,
Joseph Richard. He asked for the dissolution of the marriage and the
custody of Hortense and claimed Rs. 25,000 as damages against the second
defendant.

The second defendant filed an answer and the plaintiff filed a replica-
20 tion denying the allegations made against them.

The District Judge delivered judgment granting a decree for divorce
to the first defendant and directing the second defendant to pay Rs. 15,000
as damages. He held that the plaintiff had committed adultery with the
second defendant and that Joseph Richard was not the child of the first
defendant. He gave the custody of Hortense to the first defendant and
made no order for alimony in favour of the plaintiff or Joseph Richard.

Both the plaintiff and the second defendant have appealed from the
judgment of the District Judge. Appeal No. 118 is the appeal of the
second defendant and appeal No. 119 the appeal of the plaintiff.

80 The first defendant is a Barrister-at-Law practising in Colombo and
was acting as a Crown Counsel during a part of the period material to this
action. The first defendant's parents were members of a community
known as Colombo Chetties. The plaintiff is the child of a Colombo
Chetty—a cousin of the first defendant's mother—by a Burgher wife.
Both the plaintiff and the first defendant are described in the marriage
certificate as Ceylon Tamils. At the time of their marriage in 1933 the
plaintiff was twenty years and the first defendant twenty-eight years.
Two children were born to the plaintiff, Hortense in 1938 and Joseph
Richard on March 26, 1942.

40 The second defendant is a Doctor in Government Service. He is a
Malay, 47 years old, married to a Malay lady and is the father of seven
children.

No. 44
Judgment
of the
Supreme
Court
11-5-45
—continued.

Towards the end of 1940 the second defendant became a very intimate friend of the plaintiff and the first defendant and visited them at their residence, "Merlton", Gregory's Road, Colombo. He began to lunch at "Merlton", at least, every Sunday and go with them frequently to dances and concerts. About this time the first defendant had disposed of his car and whenever he and his wife wanted to go shopping or call on their friends the first defendant used to telephone to the second defendant for his car. The second defendant who did not employ a driver would drive his car to "Merlton" and wait at "Merlton" while the plaintiff and the first defendant went in his car. He had to wait sometimes an hour or 10 two at "Merlton" until they returned.

Towards the end of January, 1941, the first defendant went to Jaffna to prosecute at the Criminal Sessions of the Supreme Court which opened there on February 1, leaving at "Merlton" besides the servants, the plaintiff, Merita (a younger sister of the plaintiff) and Noel (a younger brother of the plaintiff) who was away from home for the greater part of the day. On leaving for Jaffna the first defendant asked the second defendant to look after his wife and sister-in-law and this was understood by the second defendant to mean that he should call on them during the absence of the first defendant and take them in his car when they wanted 20 to go shopping or to attend dances and concerts. The plaintiff herself was in Jaffna from February 27 to March 4. After returning to Colombo, she remained at "Merlton" till March 20.

Alice, the cook employed at "Merlton", says that the second defendant visited "Merlton" frequently by day during this period when the first defendant was away at Jaffna and the plaintiff was at "Merlton". She saw him going into the spare room and noticed the plaintiff coming out of the room while the second defendant was still in the room. She saw the plaintiff in the drawing room resting her head on the second defendant's lap and the plaintiff and second defendant behaving as an 30 "aluth-joduwa" (newly married couple).

The plaintiff went to Bandarawela for a change about March 20, with Merita and Hortense and stayed at a boarding house run by Mrs. Solomons. On April 12, the second defendant himself was at Bandarawela having gone there two or three days earlier for the Easter vacation. He was staying at a boarding house run by Mrs. Outschoorn. Dr. Babapulle who was spending a few days at Outschoorn's during Easter says he saw the plaintiff entering the second defendant's room one night after dinner. He is unable to say whether the second defendant was, in fact, in the room. I do not hesitate to accept the evidence of Dr. Babapulle. It is not the 40 case for the plaintiff that she went to the room of the second defendant for some innocent purpose. She denied going there and the second defendant denies any knowledge of a visit by the plaintiff.

On April 17, first defendant was at "Merlton" having come down from Jaffna. There was a birthday party at "Merlton" that day, as it was the birthday of the first defendant. The plaintiff came from Bandarawela with Hortense for that party. That evening it was arranged with

the knowledge of the first defendant that plaintiff, second defendant, Mr. Namasivayam and Miss Ludowyke—the last two being friends of the plaintiff and the two defendants—should go to Bandarawela in Mr. Namasivayam's car the next day and leave Bandarawela with Merita for a Tennis Dance at Nuwara Eliya on April 19 and return to Colombo on April 20. In pursuance of this arrangement, the plaintiff wired to her friend Mrs. Jayewickreme asking her to have dinner and sleeping accommodation ready for two at her bungalow in Bandarawela on the 19th. It was arranged at the time that the plaintiff and Miss Ludowyke should
10 spend the night of April 19 at Mrs. Jayewickreme's. The second defendant intended to go to a hotel or to Outschoorns if they had accommodation for the night. He had moreover some friends in Bandarawela with whom he could have stayed. When the party reached Bandarawela, Miss Ludowyke was left behind in Mrs. Solomons' boarding house contrary to the arrangement made in Colombo, and Mr. Namasivayam went to the house of Mr. Dias, a friend of his. The plaintiff went with the second defendant to the bungalow of Mrs. Jayewickreme. Mrs. Jayewickreme had prepared a room with two beds. She did not expect the plaintiff to come with the second defendant. The plaintiff and the second defendant dined at Mrs.
20 Jayewickreme's, and the second defendant did not show any inclination to leave the bungalow. Mrs. Jayewickreme then directed her brother-in-law to prepare a bed for the second defendant in the spare room adjoining the room set apart for the plaintiff. There was a communicating door between the two rooms which were thus occupied by the plaintiff and the second defendant. These facts are admitted, but the Counsel for the plaintiff and the second defendant contended that no inference of misconduct on April 19 should be drawn from these facts. They have not been able to explain why the second defendant did not adhere to his original plan of going to a hotel or Mrs. Outschoorn's boarding house and
30 preferred to put Mrs. Jayewickreme into unnecessary inconvenience. He is an educated person and he would have noticed that the hostess expected him to go away after dinner. The plaintiff knew the bungalow well having stayed there previously. She must have known that there was a communicating door between the two rooms. However she chose to remain silent instead of asking the second defendant to go away. She need not have felt any uneasiness about making this request, as she was admittedly a close friend of the second defendant. She knew at this time that there was a good deal of talk about her and the second defendant and yet she preferred not to interfere with the second defendant who was going to place her in
40 a false position by occupying the adjoining room.

The plaintiff and others returned to Colombo on April 20, and the plaintiff continued to live at "Merlton" with Merita and Hortense. Noel was not staying then at "Merlton". The first defendant left "Merlton" for Jaffna on April 19 and returned to "Merlton" on August 9. He left again for Jaffna on August 10 and returned finally on August 20 to "Merlton" where he continued to reside with the plaintiff until December 19 when he left the house taking Hortense with him.

The plaintiff was taken ill on July 9, 1941, and Merita telephoned at once to Dr. Gunasekera, the family Doctor, and the second defendant. The second defendant came first and Dr. Gunasekera who came a little later found him in plaintiff's bedroom with the plaintiff while Merita was in the verandah. Dr. Gunasekera thought from the symptoms that the plaintiff's illness was due to renal colic, appendicitis or ectopic gestation. He had to examine her next to the skin. For this purpose she had to undress partially. During this examination the second defendant elected to remain in the bedroom though he was not there in his capacity as a Doctor attending on the plaintiff.

10

Alice says that after the plaintiff's return from Bandarawela on April 20, the second defendant spent some nights at "Merlton" and the plaintiff and the second defendant occupied one room on these occasions and that the plaintiff alone was taken out by the second defendant in his car sometimes after dinner. Another servant Pabilis refers to an incident by day during this period. The plaintiff was in the spare room with the second defendant when Pabilis found the plaintiff's father coming to the bungalow. Pabilis ran and knocked at the door of the spare room and then the plaintiff rushed out of the room and by going along some passage unseen by the father contrived to make it appear to her father that she had been 20 in her own bedroom when her father arrived. The District Judge accepts the evidence of Alice and Pabilis.

As the District Judge appeared to me to have misdirected himself when he proceeded to consider the evidence of adultery on the erroneous assumption that the plaintiff was in March a "sexually starved wife"—an assumption based solely on the fact that the husband had then been away from her for three or four weeks—I examined the evidence carefully. On that examination I have reached the decision that the first defendant has established the charge of adultery.

Now I shall consider the question as to the legitimacy of Joseph 30 Richard who was born on March 26, 1942. Section 112 of the Evidence Ordinance enacts :

"The facts that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after dissolution, the mother remaining unmarried, shall be conclusive proof that such person is the legitimate son of that man, unless it can be shown that that man had no access to the mother at any time when such person could have been begotten or that he was impotent".

That section has been construed in *Jane Nona vs. Leo* (1923) 25 New 40 Law Reports 241, which is a decision of the Full Bench and is binding on us. It was held in that case that the word "access" was used in section 112 of the Evidence Ordinance in the sense of "actual intercourse" and not "opportunity for intercourse". It was further held that our Courts should not act on the rule of English Law that parties to a marriage should not be permitted to give evidence as to the fact of the absence of intercourse between them.

This case has been presented on the footing that the first defendant had sexual intercourse with the plaintiff on April 17, 1941, and then again on August 9, 1941. It is not suggested that Joseph Richard was born as the result of the act of coition on April 17, 1941—343 days before the date of birth. The case of the plaintiff appears to be that the child was born as the result of an act on August 9, 1941. The child having been born to the plaintiff during the subsistence of a valid marriage between her and the first defendant the burden rests on the first defendant to prove that he is not the father of the child.

No. 44
Judgment
of the
Supreme
Court
11-5-45
—continued.

10 Five medical witnesses have given their opinion on this question. Four of them—Dr. Wickremasooriya, Dr. Attygalle, Dr. Navaratnam and Dr. Gunasekera—were called by the first defendant while Dr. Thiagarajah was called by the plaintiff. Of these witnesses Dr. Wickremasooriya who is now dead was admittedly regarded as one of the most eminent obstetricians and gynæcologists in Ceylon. Dr. Gunasekera is a general medical practitioner. He did not claim to be an expert in gynæcology or obstetrics and he admitted frankly that he did not study or consider the relevant medical questions for the purpose of giving his opinion.

The medical evidence dealt with the following questions :—

- 20 (a) What was the last menstrual period of the plaintiff ?
(b) Could a coitus on August 9, 1941, have resulted in conception ?
(c) Could not Joseph Richard have been begotten as the result of a coitus on August 9, 1941 ?

On question (a) there is the evidence of the plaintiff that her last menstrual period was about *July 11 to 14, 1941*. Dr. Wickremasooriya says that she made a similar statement to him in December, 1941. The first defendant disputes the correctness of the date, as, according to Dr. Wickremasooriya, the plaintiff was unable to give the date in October, 1941, when she consulted him first about her pregnancy. It is suggested that in December she gave a late date in order to be in a position to say that the baby was conceived after August 9 when the first defendant had access to her. I am not prepared to accept that suggestion. Dr. Wickremasooriya says that the plaintiff did not give the date in October and adds that “she was rather ill at the time and looked emaciated” and “she was rather confused about the date”. There is some conflict of evidence between Dr. Wickremasooriya and the plaintiff as to her statement to him in October. We cannot exclude altogether the probability of Dr. Wickremasooriya making a mistake. There is clearly a conflict between Dr. Wickremasooriya and the first defendant as to what Dr. Wickremasooriya told the first defendant in November, 1941. The fact is that Dr. Wickremasooriya could not have been expected reasonably to remember all that passed between him and the plaintiff and the first defendant about October and November, 1941, when there was no talk of any trouble between the spouses. There is also the evidence of the first defendant to the effect that plaintiff told him in September that she had missed her period in

September, probably, she thought at the time that she had her period in August because she had “bleeding” in August. As that “bleeding” cannot be regarded as true menstruation, her statement made to the first defendant did, in fact, amount to her saying that her last menstrual period was in July and not earlier. Moreover Dr. Wickremasooriya has stated that he examined the plaintiff on several occasions during her pregnancy and that he had no reason to think as a result of such examination that she had given him an incorrect date. The evidence of Dr. Gunasekera does not necessarily prove that the plaintiff could not have her period on July 11. I would, therefore, proceed to consider the medical evidence on 10 the footing that the last menstrual period of the plaintiff was about July 11 to 14, 1941.

With regard to question (b), Dr. Wickremasooriya says that while the likely period for *fertilisation* would be what is known as the mid period (*i.e.* 9 to 17 days from the first date of the preceding menstrual period), that fertilisation is possible in the case of a normal woman at any time during the inter-menstrual period. He has “seen cases where it has occurred just after or just before the period is due”. He says that this possibility is still greater in the case of a woman with irregular periods. The plaintiff’s evidence shows that her periods were irregular. Dr. Atty- 20 galle says that “in the case of irregular people it is not possible for anyone to say with any precision exactly when the ovulation period is”. Though he says that “it is almost impossible” for conception to take place if the intercourse was “a couple of days before the onset of menstruation”, his later evidence appears to restrict this impossibility only to normally menstruating women. His observations on the evidence of Dr. Wickremasooriya seem to suggest that he thought a conception about August 9 was possible in the case of the plaintiff. Though Dr. Attygalle answers each question put to him with greater confidence than Dr. Wickremasooriya and without the caution and 80 restraint of the latter, it is at times difficult to reconcile the different answers given by him in the course of his examination.

Dr. Navaratnam thinks that in the case of a woman with a regular menstrual cycle fertilisation is impossible outside the “9th to 17th day period”, but he is prepared to agree that if the plaintiff had irregular periods she could have conceived even twenty-eight days after the last menstrual period. Dr. Thiagarajah says that it is possible for any woman—whether her cycle is regular or irregular—to have a fruitful coitus at any time of the inter-menstrual period and adds that “the safe period of Ogino and Knaus has been proved to be a failure”. 40

Our attention has been invited to the following passage in “Menstrual Disorders and Sterility” by Mazer & Israel at page 70 :—

“ The assumption that ovulation does not occur before the fifteenth day of the expected flow, regardless of the length of the menstrual cycle, is now widely employed as a means of “ natural contraception ”

No. 44
Judgment
of the
Supreme
Court
11-5-45

.....

.....This method of contraception has not achieved universal acceptance because it is increasingly apparent, as more and more biologic data accumulate, that the reproductive cycle in the human female is complex and variable. There is, for instance, some circumstantial evidence to indicate that ovulation may occur more than once in a single menstrual cycle and that, even in the human, it may be evoked prematurely by coitus. These hypothetical concepts are seemingly supported by authentic clinical records of pregnancy following instances of isolated coitus during any phase of the menstrual cycle, even during menstruation. It is possible that a high degree of sexual excitement during intercourse may evoke the production or the release of a sufficient quantity of gonadotropic hormone in some women to cause ‘ untimely ’ ovulation.”

—continued.

The authors conclude the discussion by citing with approval the opinion of C. G. Hartman expressed in “ Time of Ovulation in women ”:—

20 “ We still have a long way to go before we can brand as a falsehood a woman’s assertion that she conceived in the so-called sterile period of the cycle.”

I hold that the plaintiff could have had a fruitful coitus on August 9, 1941.

As regards question (c) it has to be borne in mind that Dr. Wickremasooriya is the only witness who attended on the plaintiff during her pregnancy and was present at the birth of the child. The other medical witnesses have to base their opinions on the evidence given by Dr. Wickremasooriya with regard to the observations made by him.

Dr. Wickremasooriya stated :—

- 30 (1) that on October 23, 1941, “ the uterus was enlarged to *about* four fingers’ breadth above the junction of the pubic bone ” and that he considered that “ she was then within 14 and 16 weeks of gestation *from the last menstrual period*—an average of 15 weeks.”
- (2) that on December 17, 1941, he heard the foetal heart sounds which are “ normally heard about the 20th week but occasionally a little earlier.”
- 40 (3) that the child at the time of delivery was “ *for all practical purposes* ” a fully developed child and that “ *so far as he recollected* ” it weighed 6½ lbs. that the skin was smooth, there was sub-cutaneous fat, the finger nails had developed beyond the tips, there was a good growth of hair, the testicles had entered the scrotum, the baby cried lustily took to the breast and sucked vigorously.

Now with regard to the observations made by Dr. Wickremasooriya on October 23 and December 17, it will be noticed that the facts observed

by him are quite consistent with a conception about August 9, as the child would have been on the respective dates in the 15th week (104th day) and 23rd week (159th day) of gestation calculated from the first date of the last menstrual period. Moreover Dr. Wickremasooriya himself admits that “there is some disagreement among authors of text books” with regard to the height of the uterus at various stages of pregnancy.

With regard to the observations at the time of delivery it has to be noted that in his evidence Dr. Wickremasooriya generally qualifies his statement that the child was fully developed by adding the words “for all practical purposes”. Moreover, he does not state the weight precisely but takes care to say that so far as he recollected the child weighed 6½ lbs. Dr. Wickremasooriya stated that he had a good look at the child, as he knew “the case would come to Court” but added that he did not adopt anyone of the “various other special methods” for ascertaining whether it was a full term child. He admitted further that he failed to measure the length of the child. In this connection, it has to be noted that according to Johnstone (Text Book of Midwifery) Ninth Edition, page 93 “most observers lay more stress upon length than upon weight”. Dr. Wickremasooriya gave his opinion that the child might have been conceived roughly about July 18. 20

In assessing this opinion it has to be borne in mind that Dr. Wickremasooriya agreed with the views expressed in the following passage at page 47 of volume 2 of *Taylor's Principles and Practice of Medical Jurisprudence* (Ninth Edition), viz. :

“The most progressive stage of development is considered to be during the last two months of gestation—the changes which the foetus undergoes are greater and more marked at this than at any other time. The general opinion is that an eight-months child is not with any certainty to be distinguished from one born at the ninth month.”

The months mentioned in the above passage are clearly calendar months. 30
 Dr. Wickremasooriya agrees further that a child with an uterine existence of 252 days may be a fully developed child. A baby conceived as the result of a coitus on August 9, 1941, and born on March 26, 1942, would have had a uterine existence of nearly 228 days. In making a comparison between such a baby whose date of conception is ascertained by reference to the date of coitus with the cases referred to in the text books or mentioned in records kept in hospitals it should be remembered that the period of gestation in those cases is calculated with reference to the menstrual period. Therefore, for the purpose of comparison the period of gestation of the baby conceived as the result of a coitus on August 9, 1941, should 40
 be calculated as from July 11, 1941, the first date of the last menstrual period and then the gestation period would be 258 days or over eight calendar months. Such a baby according to Taylor cannot be distinguished with any certainty from a full-term baby. (See also Taylor (Ninth Edition), Volume 1, page 153).

Dr. Attygalle gives the date of conception as 270 to 275 days before the date of delivery though most of the text book writers mentions the lowest limit as 265 days. Dr. Attygalle would thus fix the period between June 24, and June 29, 1941. He says then that he would allow as the extreme limits of variability "two weeks on either side." This would fix the latest date of conception according to him as July 13, 1941.

No. 44
Judgment
of the
Supreme
Court
11-5-45
—continued.

He says that he does not base his opinion "on features only, but on the general observations (Dr. Wickremasooriya) made during the pregnancy period". He says definitely that "it is impossible in the case of a child conceived on August 9, for the uterus to have reached up to four finger breadths above the symphysis pubes on October 23". No importance can be attached to this *expression* of view as he says later that he is unable to say what a "four finger-breadth space" is and suggests to cross-examining Counsel that he should ascertain it by measuring Dr. Wickremasooriya's fingers.

The method of measurement adopted by Dr. Wickremasooriya was undoubtedly unreliable for the purpose of forming a correct opinion. Paul Titus (*The Management Obstetric Difficulties*, second Edition, page 111) says :

20 "The height of the fundus of the uterus gives valuable information about the duration of the pregnancy, especially if measured routinely at frequent intervals, as, for example, at each antepatum visit."

"These measurements must always be taken from the fixed point of the upper edge of the symphysis pubes, by means of a pelvimeyer or similar caliper, in order to have any degree of accuracy or scientific uniformity. It is futile to attempt any estimations of the period of gestation or probable date of confinement by such methods as the number of "finger-breadths" above the symphysis, or below the ensiform."

30 Moreover, even where the measurements are accurate any opinion based on them must be qualified. De Lee & Greenhill (*Principles and Practice of Obstetrics*, Eighth Edition, page 65) say :

"Conclusions as to the duration of pregnancy based on the height of the fundus above the pubes must be carefully qualified..... Naturally the accuracy of determining the duration of pregnancy is not great, being disturbed by the inconstancy of the location of the umbilicus, the elasticity of the belly wall, intra abdominal conditions, the amount of liquor amnii, the size of the child, its position and other factors. The shape and size of the trunk alter uterine relations."

40 With regard to the hearing of foetal heart beats on December 17, Dr. Attygalle says it is an "impossibility" in the case of a child conceived about August 9, but immediately after he says, "very rarely it may be possible". Later, when he is questioned about it, he recedes so much from the first view of "impossibility" that he corrects

No. 44
Judgment
of the
Supreme
Court
11-5-45
—continued.

Counsel by saying that his earlier answer was “not likely.” Still later he concedes that “probably” the heart beats could have been heard on December 17.

Dr. Attygalle accepts the view expressed in the passage cited above from *Taylor's Principles and Practice of Medical Jurisprudence* and agrees that he cannot “say without very close observation the difference between a child born in the eighth calendar month” and a child born in the ninth calendar month. He says again that “any boy born in the ninth or tenth month (lunar month) will have the same characteristics as a full-term child.” He agrees with the following opinion given at page 93¹⁰ of *Johnstone on Midwifery* :—

“That pregnancy followed by the birth of a fully developed child, may be prolonged or abbreviated is an observed fact..... fully developed children have been recorded as being born after gestation as short as 240 days and as long as 314, 320 and even 331 days from the commencement of the last period.”

Now the periods given by Johnstone are clearly periods calculated from the last menstrual period. Dr. Attygalle himself admits that “medical science and authorities have given the characteristics of children reckoned from the notional date”. A child born on March 26, 1942, as the result of a coitus on August 9, 1941, would be a child with a gestation period of about 258 days reckoned from the last menstrual period and could, therefore, according to Johnstone's view be a fully developed child.

Dr. Navaratnam says that the conception must have been “somewhere about the 19th June” and is prepared to allow two weeks “this way and that way”. This would fix the period of conception roughly between June 5 and July 3. Later he says more definitely that the child could not have been conceived “later than the end of June”. Judging solely by the height of the uterus observed by Dr. Wickremasooriya³⁰ on October 23, he thinks that the conception must have been between July 1 and 19, but admits that the height of the uterus is not determined solely by the period of pregnancy and is liable to individual variations. He concedes that foetal heart beats could be heard after the 20th week. He says that with a normal monthly cycle and proper ovulation he would have no difficulty in distinguishing between two children born in the ninth calendar month if their periods of uterine existence differ by more than two weeks. When he is asked whether the position would be different if he was considering the case of an irregularly menstruating woman his reply is, “in the case of an irregularly menstruating woman⁴⁰ we go by other data”.

Dr. Navaratnam adds to the complexity of the problem when he seems to say that in the case of a woman with an irregular cycle, the period of gestation should not be determined from the last menstrual period.

Dr. Thiagarajah says the child "forms the characteristics of a full-term child in the 36th week" of gestation reckoned from the last menstrual period and that "the subsequent development of the child is in growth and weight not in characteristics". He draws further an inference from the weight of the child that it had a premature delivery caused by the rupture of the membrane which even according to Dr. Wickremasooriya may have hastened the arrival of the baby by about ten days. Dr. Wickremasooriya has stated in evidence that the weight of Hortense the first child of the plaintiff was "somewhere between six and seven, nearer
10 seven". Dr. Thiagarajah says, that generally "subsequent babies are heavier" and the fact that the child in question weighed less than Hortense tends to prove that this child was born prematurely. His position is that, if the last menstrual period is July 11 to 14, it is impossible to say that a coitus on August 9, could not have "produced this child".

The first defendant denies that he is the father of the child on the sole ground that he had no access to the mother at any time when the child could have been begotten. Could it be said that the medical evidence proves that Joseph Richard could not have been begotten on August 9? To say so, the medical opinion must be clear and decisive. In this case
20 the opinions of the doctors are at times conflicting where they are not hesitating and doubtful. There are, moreover, the opinions of the text book writers which throw a great deal of doubt on the case of the first defendant.

It was pointed out by Counsel for the first defendant that the present case was distinguishable from *Gaskill vs. Gaskill* (1921) Probate 425 and *Clark vs. Clark* (1939) All England Reporter 59, as in each of these cases no evidence was led to shew that the wife had a lover and the charge of adultery was based solely on the abnormality of the period of pregnancy. But the period in this case is neither so low as in *Clark vs. Clark* (supra) or
30 so abnormally long as in *Gaskill vs. Gaskill* (supra). The period of pregnancy here being 228 days, the improbability of Joseph Richard having been begotten on August 9, 1941, is comparatively slight. A child born to a woman during the subsistence of a valid marriage, cannot, I think, be made a bastard on such evidence as is given by the experts in this case. The fact that during the material period of time the plaintiff was on terms of intimacy with the second defendant does not of course entitle the first defendant to ask a Court to hold that he is not the father of the child, if he had access to the mother at a time when the child could have been begotten.

40 In *Cope vs. Cope* (1833) 1 Moody and Robinson 269, Alderson, J. said:

"If you are satisfied that the husband had sexual intercourse with his wife, the presumption of legitimacy is not to be rebutted by its being shewn that other men also had intercourse with the woman. The law will not, under such circumstances, allow a balance of the evidence as to who is most likely to have been the father."

That passage was cited with approval in *Warren vs. Warren* (1925) Probate 107.

I hold that the first defendant has failed to prove that Joseph Richard is not his child.

There remains for consideration the question of damages. The damages awarded in a divorce action are compensatory and not punitive. The two main considerations governing the award of such damages are (a) the actual value of the wife to the husband, and (b) the proper compensation to the husband for the injury to his feelings, the blow to his marital honour and the loss to his matrimonial and family life (*de Silva vs. de Silva* (1925) 27 New Law Reports 289 at 310). The District Judge says that "the actual value of this wife to this husband is nil". As regards the second consideration for the award of damages, there is no doubt that the second defendant has betrayed the trust reposed in him by the first defendant. On the other hand, the first defendant has acted very indiscreetly. He encouraged the second defendant—a man of a different race and different creed—to be on the terms of closest friendship with his wife, although the second defendant's wife who is not a Purdah lady refrained from visiting his wife. He placed himself and his wife under obligation to the second defendant. He asked the second defendant to call at 20 "Merlton" during his absence in Jaffna. He did all this though he knew before he left for Jaffna that there had been ugly rumours about the plaintiff. He knew that his mother and the plaintiff's father had spoken to plaintiff about these rumours, but he paid no heed to them. In his letter to his mother he said: "All I ask is to be allowed to live my own life in my own way". There is, I think, in this case evidence of carelessness and neglect on the part of the husband in not determining the close association of the second defendant with the plaintiff. The second defendant gets about Rs. 1,000 a month. He has to support his wife and seven children. He has no property and no other source of 30 income. He is in debt and his cheques have been dishonoured. His credit is so low that he is compelled to go to Afghan money lenders for loans of money.

Taking into consideration all these circumstances and also the damages usually awarded in our Courts, I think the second defendant has been ordered to pay excessive damages. As my brother thinks, however, that substantial damages should be given in view of the fact that certain suggestions were made against the first defendant in the District Court, I agree to his assessment of the damages at Rs. 10,000.

I have to refer to two incidental matters at this stage :

40

When Dr. Thiagarajah was being cross-examined the trial Judge put to him the question: "You deny that you have been twisting medical opinion to set up a theory?" The witness replied, "Yes, I must emphatically protest if any such suggestion is made". The Judge thereupon, informed the witness that "no such suggestion has yet been made". In the course of his judgment the Judge says about Dr. Thiagarajah: "His cross-examination clearly shows his partisanship and how when dislodged from one point he took refuge behind another. I further hold that being

entirely biased in favour of the side which retained him he has in this case tried to twist scientific facts in order to accord with his theories which he thought would help the plaintiff's case". Dr. Thiagarajah must have been upset by the remark made by the Judge when he was under cross-examination. He has no doubt shown some irritation and impatience under the stress of a long cross-examination though to a less degree than a medical witness called by the first defendant. Some confusion has been created by the failure sometimes to formulate with precision the questions put to medical witnesses. This resulted often in those witnesses understanding a question in a sense different from that intended by the party putting the question. I have examined the evidence of Dr. Thiagarajah and I think I should say in fairness to him that I have no doubt that he gave his opinion in good faith. I may add that I hold the same view with regard to the other medical witnesses.

When the first medical witness, Dr. Wickremasooriya was giving evidence he was cross-examined by the Counsel for the 1st defendant on an article contributed by Dr. Theobald to the British Medical Journal. Later, when Dr. Attygalle was under cross-examination, it transpired that Dr. Theobald was in Ceylon at the time having come here on a visit. Thereafter, the first defendant filed a list of witnesses containing the name of Dr. Theobald and moved to call him as an expert. Acting under section 175 of the Civil Procedure Code the District Judge refused the application. The Counsel for the plaintiff appearing before us applied for leave to call Dr. Theobald even at this stage. In the course of his argument the Counsel for the first defendant stated that he would not object to the application. Even if the first defendant opposed the application, I would have granted it in the exercise of the powers vested in this Court under section 773 of the Civil Procedure Code, if the medical evidence led in the case was less uncertain and vague and thus made it desirable to admit the evidence of Dr. Theobald in the interests of the child.

To sum up, I hold (a) that the first defendant has proved the charge of adultery, (b) that the first defendant has failed to disprove the legitimacy of Joseph Richard, and (c) that the damages should be reduced to Rs. 10,000. The District Judge will have to consider the questions of custody and alimony in respect of Joseph Richard.

I think that under section 612 of the Civil Procedure Code the second defendant alone should have been made liable for the costs of the first defendant. Such costs should not include any expenses incurred by the first defendant in placing before the Court the evidence of Dr. Attygalle and Dr. Navaratnam and in respect of the relative proceedings in Court as these witnesses were called solely for the purpose of giving expert evidence on the question whether Joseph Richard was a legitimate child. Each party will bear his or her own costs of appeal.

The decree of the District Court will stand subject to the modifications indicated in the two preceding paragraphs.

Sgd. E. A. L. WIJEYWARDENE,
Puisne Justice.

CANNON, J.

I agree with the conclusions reached by my brother Wijeyewardene, J. I wish to add something about the medical evidence. The learned District Judge thought that Dr. Thiagarajah was a partisan and a biased witness, and that he had, in consequence, unconsciously strained scientific facts to suit his theories. Mr. Nadarajah asked us to review this criticism, submitting that it was not deserved. The Judge based his criticism on the way Dr. Thiagarajah gave his evidence on three aspects of pregnancy, as regards which the Judge remarks :—

10

(1) “ He has (perhaps unintentionally) twisted science in order to suit his theories regarding irregular and regular menses, and on the question whether there can be menstruation without ovulation. He first said that menstruation did not depend on ovulation. He then changed that by saying “ you may get menstruation without ovulation and ovulation without menstruation and that for menstruation to take place ovulation may precede it ”.

(2) “ When he realised that the insemination delivery period might be an important factor in this case, he tried to trim down the effect of Dr. Wickremasooriya’s evidence that the I. D. P. is from 265 to 270 20 days.

(3) “ It is a medical axiom that if the membranes rupture before the os dilates, it is called a premature rupture, but Dr. Thiagarajah had the hardihood to suggest that the word ‘ premature ’ as used in this connection, meant premature delivery, and had nothing to do with a stage in the labour.”

On going through the record of the evidence of Dr. Thiagarajah and, indeed, of all the expert medical witnesses, one is struck by how frequently Counsel and the witnesses are at cross-purposes owing to the way in which medical terms were ambiguously used, not only in the questions and 30 answers but also by the writers of the scientific text-books, which were being frequently cited. The word “ menstruation ”, for instance, has different meanings. Such bleeding may be ovulating (called “ proper ” menstruation) or anovulating (called “ pseudo ” or “ abnormal ” menstruation). To the layman such words as “ gestation ”, “ fertilisation ”, “ conception ”, may each convey one and the same idea ; but to the medical profession each of these words may have more than one meaning. Because the different senses in which such words are used were not sufficiently emphasised in the text-books and in the evidence, confusion of thought was bound to arise, and I am inclined to think that on that 40 account false impressions were sometimes created.

The insemination delivery period of 265-270 days from coitus, given by Dr. Wickremasooriya, was based on the assumption that ovulation occurred about the fifteenth day of the menstruation cycle, but Dr. Thiaga-

rajah was of opinion, like Dr. Wickremasooriya, that ovulation could occur on any day of the menstruation cycle, in which case the insemination delivery period could be from 250 days. It was in this way that he appears to have "qualified" Dr. Wickremasooriya's evidence. There was an apparent contradiction in terms. When Dr. Thiagarajah said that the insemination delivery period had no relation to the last menstrual cycle. The context of his evidence, however, indicates that he must have meant that the gestation itself was unaffected by the menstrual cycle. The number of days of the insemination delivery period is admittedly calculated with reference to the last menstrual period. Here the word "cycle" has been loosely used for the word "period".

No. 44
Judgment
of the
Supreme
Court
11-5-45
—continued.

Dr. Thiagarajah drew a distinction between what he terms a "premature" rupture of the membranes and an "early" rupture. He said that an untimely rupture was called "premature" when it occurred before the onset of labour, and "early" when it happened after such onset, his point being that a premature rupture was likely to hasten birth, while an early one would not. This provoked the Judge's comment quoted above.

But the authors of "Midwifery" by Ten Teachers use the same language as Dr. Thiagarajah to distinguish premature rupture before and after labour has begun. And in an article on the subject in "The Journal of Obstetrics and Gynæcology of the British Empire" (Vol. 50, No. 5, published in October, 1943) Dr. D. S. Greig, the Medical Officer of a Maternity Hospital, reviews 320 cases and makes the following definition :

"Premature rupture of membranes is defined as having taken place when the rupture of the membranes precedes labour pains, recognised and acknowledged by the patient."

Apparently the degree of prematurity in relation to its effect is expressed by some medical men by the use of the words "premature" and "early."

It is clear that Dr. Thiagarajah said that premature rupture of the membranes means premature delivery, but here again the context shows that he did not intend this answer to be taken literally, for he had just before stated that such a premature rupture "generally indicates premature delivery". If for the word "means" he had said "generally indicates", he would obviously have more accurately expressed what was in his mind.

The learned Judge's criticism of Dr. Thiagarajah appears to arise from contradictions in the evidence due not to equivocation by Dr. Thiagarajah but to the equivocal nature of the medical terms which were being quoted from scientific books by Counsel and sometimes put to the witnesses in a univocal sense. This resulted in the evidence not only of Dr. Thiagarajah but of all the expert medical witnesses being sometimes apparently contradictory and therefore confusing. Taking the record of the evidence of Dr. Thiagarajah as a whole and reading it in the light of the

No. 44
Judgment
of the
Supreme
Court
11-5-45
—continued.

phraseological inexactitudes mentioned, I am left with the impression that Dr. Thiagarajah was giving a *bona fide*, though sometimes obscure, expression of his views on the scientific data.

Sgd. G. H. F. CANNON,
Judge of the Supreme Court.

No. 45.

No. 45
Decrees
of the
Supreme
Court
11-5-45

Decrees of the Supreme Court.

GEORGE THE SIXTH, BY THE GRACE OF GOD OF GREAT BRITAIN,
IRELAND AND THE BRITISH DOMINIONS BEYOND THE SEAS, KING, 10
DEFENDER OF THE FAITH, EMPEROR OF INDIA.

118/1944.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

MERLE ALLES *nee* DE COSTA of Kandana*Plaintiff-Respondent.*

And

S. ALLES of Colombo *1st Defendant-Respondent.*

Against

DR. T. S. M. SAMAHIN of Colombo *2nd Defendant-Appellant.*

Action No. 586/D.

District Court of Colombo

This cause coming on for hearing and determination on the 23rd, 24th, 25th, 26th, 27th and 30th April and 1st, 2nd, 3rd, 4th, 7th, 10th and 11th day of May, 1945, and on this day, upon an appeal preferred by the 2nd defendant before the Hon. Mr. E. A. L. Wijeyewardene, K.C., Puisne Justice and the Hon. Mr. G. H. F. Cannon, Puisne Justice of this Court, in the presence of Counsel for the appellant and respondents.

It is considered and adjudged that the Decree entered in this action by the District Court of Colombo and dated the 27th day of February, 1943, be and the same is hereby modified by declaring (a) that the first defendant has proved the charge of adultery, (b) that the first defendant has failed to disprove the legitimacy of Joseph Richard, and (c) that the damages be reduced to Rs. 10,000. The District Judge do consider the questions of custody and alimony in respect of Joseph Richard. Subject to the above modifications the Decree of the District Court do stand.

And it is further ordered and decreed that each party do bear his or her own costs of this appeal. The second defendant-appellant do pay to the first defendant-respondent his taxed costs of the proceedings in the Court below save and except the expenses incurred by the first defendant in placing before the Court the evidence of Dr. Attygalle and Dr. Navarathnam.

No. 45
Decrees
of the
Supreme
Court
11-5-45
—continued.

Witness the Hon. Sir John Curtois Howard, Kt., K.C., Chief Justice, at Colombo, the 11th day of May, in the year of our Lord One thousand Nine hundred and Forty-five, and of Our Reign the Ninth.

10

Signed. CLARENCE DE SILVA,
Registrar, S. C.

GEORGE THE SIXTH, BY THE GRACE OF GOD OF GREAT BRITAIN,
IRELAND AND THE BRITISH DOMINIONS BEYOND THE SEAS, KING,
DEFENDER OF THE FAITH, EMPEROR OF INDIA.

119/1944.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

MERLE ALLES of "Fairlight", Kandana *Plaintiff-Appellant.*

Against

- (1) S. ALLES, Advocate of "Laurentum", Ward Place,
Colombo *1st Defendant-Respondent.*
(2) DR. T. S. M. SAMAHIN of Dambulla ... *2nd Defendant-Respondent.*

Action No. 586/D.

District Court of Colombo.

This cause coming on for hearing and determination on the 23rd, 24th, 25th, 26th, 27th, and 30th April and 1st, 2nd, 3rd, 4th, 7th, 10th and 11th day of May, 1945, and on this day, upon an appeal preferred by the plaintiff before the Hon. Mr. E. A. L. Wijewardene, K.C., Puisne Justice and the Hon. Mr. G. H. F. Cannon, Puisne Justice of this Court, in the presence of Counsel for the appellant and respondents.

It is considered and adjudged that the Decree entered in this action by the District Court of Colombo and dated the 27th day of February, 1943, be and the same is hereby modified by declaring (a) the first defendant has proved the charge of adultery, (b) that the first defendant has failed to disprove the legitimacy of Joseph Richard, and (c) that the damages be reduced to Rs. 10,000. The District Judge do consider the questions of custody and alimony in respect of Joseph Richard. Subject to the above modifications the Decree of the District Court do stand.

And it is further ordered and decreed that each party do bear his or her own costs of this appeal. The second defendant-respondent do pay

No. 45
Decrees
of the
Supreme
Court
11-5-45
—continued.

to the 1st defendant-respondent his taxed costs of the proceedings in the Court below save and except the expenses incurred by the first defendant in placing before the Court the evidence of Dr. Attygalle and Dr. Navaratnam.

Witness the Hon. Sir John Curtois Howard, Kt., K.C., Chief Justice, at Colombo, the 11th day of May, in the year of our Lord One thousand Nine hundred and Forty-five, and of Our Reign the Ninth.

Sgd. CLARENCE DE SILVA,
Registrar, S. C.

No. 46
Petition for
Conditional
Leave to
Appeal to
Privy
Council
1-6-45

No. 46.

10

Petition for Conditional Leave to Appeal to Privy Council.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

MERLE ALLES *nee* DE COSTA of Kandana *Plaintiff.*

S. C. No. 118 & S. C. No. 119
D. C. Colombo Final 586/D.

vs.

1. S. ALLES, Advocate of Colombo,
2. DR. T. S. M. SAMAHIN of Dambulla *Defendants.*

And

S. ALLES, Advocate of Colombo *Appellant.* 20

vs.

1. MERLE ALLES *nee* DE COSTA of Kandana presently of Effington, Alutmawatte Road, Colombo,
2. DR. T. S. M. SAMAHIN of Dambulla presently of Colombo
Respondents.

To

THE HON'BLE THE CHIEF JUSTICE AND THE OTHER JUDGES
OF THE HON. THE SUPREME COURT.

On this 1st day of June, 1945.

THE PETITION of the 1st defendant-appellant abovenamed appearing by Henricus Abraham Abeyewardene his Proctor, states as follows :— 30

1. That feeling aggrieved by the judgment and decree of this Hon'ble Court pronounced on the 11th May, 1945, the appellant is desirous of appealing therefrom.

2. That the said judgment is a final judgment and the matters in dispute on the appeal amount to Rupees Five thousand and involve civil rights of the value of more than Five thousand Rupees.

WHEREFORE THE APPELLANT prays for conditional leave to appeal against the said judgment of this Court dated 11th May, 1945, to His Majesty the King in Council.

No. 46
Petition for
Conditional
Leave to
Appeal to
Privy
Council
1-6-45
—continued.

Sgd. H. A. ABEYEWARDENE,
Proctor for 1st Defendant-Appellant.

No. 47.

10 **Judgment of the Supreme Court granting Conditional Leave to Appeal.**

*Application for Conditional Leave to Appeal to the Privy Council in
118-119 D. C. Colombo No. 586.*

No. 47
Judgment
of the
Supreme
Court
granting
Conditional
Leave to
Appeal
8-8-45

Present : KEUNEMAN, S.P.J., & ROSE, J.

Argued and Decided on : 3rd August, 1945.

Counsel : H. V. Perera, K.C., with D. W. Fernando and C. J. Ranatunge,
for the Petitioner.

*Nadarajah, K.C., with H. W. Jayewardene and G. T. Samara-
wickreme, for the Plaintiff-Respondent.*

20 **KEUNEMAN, S.P.J.**

In this case in the District Court the petitioner succeeded in obtaining a decree for divorce against his wife, the 1st respondent, and obtained an order for damages of Rs. 15,000 against the 2nd respondent. The District Judge further made order that the second child, Joseph Richard, was not the legitimate child of the petitioner. In appeal the Supreme Court reversed the finding with regard to legitimacy and held that Joseph Richard was the legitimate child of the petitioner, or at any rate that it had not been proved that he was not the legitimate child. The decree for divorce was upheld in appeal but the damages against the 2nd respondent was
30 reduced to the sum of Rs. 10,000. The petitioner now appeals in connection with the reduction of damages as well as on the question of paternity to the Privy Council.

It has been argued for the 1st respondent that this question of legitimacy is one which cannot be pecuniarily assessed, but I think the real question we have to determine is what is the total detriment to the appellant himself. He certainly claims the sum of Rs. 5,000 additional from the 2nd respondent and he also appeals on this question of legitimacy. The total detriment to him is therefore at least Rs. 5,000 and probably

No. 47
Judgment
of the
Supreme
Court
granting
Conditional
Leave to
Appeal
3-8-45
—continued.

some other unspecified amount as well. I do not think it is open to us to distinguish between the case of the two respondents but merely to consider the cumulative effect of the judgment against which the petitioner appeals.

One further point is raised on behalf of the 1st respondent. She applies that a sum of Rs. 3,000 should be paid to her in order to enable her to fight this appeal. There does not appear to be any power reserved to us to make an order of this nature and the application must accordingly be refused.

Conditional leave is allowed under the usual conditions.

10

Sgd. A. E. KEUNEMAN,
Senior Puisne Justice.

ROSE, J.

I agree.

ALLAN ROSE,
Puisne Justice.

No. 48.

Decree of the Supreme Court granting Conditional Leave to Appeal.

No. 48
Decree
of the
Supreme
Court
granting
Conditional
Leave to
Appeal
3-8-45

GEORGE THE SIXTH, BY THE GRACE OF GOD OF GREAT BRITAIN,
IRELAND AND THE BRITISH DOMINIONS BEYOND THE SEAS, KING, 20
DEFENDER OF THE FAITH, EMPEROR OF INDIA.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

1. MERLE ALLES *nee* DE COSTA of Kandana, presently of Effington, Alutmawatte Road, Colombo ... *Plaintiff-Respondent.*
2. DR. T. S. M. SAMAHIN of Dambulla, presently of the General Hospital, Colombo *2nd Defendant-Respondent.*

Against

S. ALLES, Advocate of Colombo *1st Defendant-Appellant.*

Action No. 586 (S. C. Nos. 118-119)

District Court of Colombo.

In the matter of an application by the 1st defendant-appellant dated 30 1-6-45 for conditional leave to appeal to His Majesty the King in Council against the decree of this Court dated 11-5-45.

This matter coming on for hearing and determination on the 3rd day of August, 1945, before the Hon. Mr. A. E. Keuneman, K.C., Puisne Justice and the Hon. Mr. A. E. P. Rose, Puisne Justice of this Court, in the presence of Counsel for the applicant and respondents.

It is considered and adjudged that this application be and the same is hereby allowed upon the condition that the applicant do within one month from this date :

1. Deposit with the Registrar of the Supreme Court a sum of Rs. 3,000 and hypothecate the same by bond or such other security as the Court in terms of section 7 (1) of the Appellate Procedure (Privy Council) Order shall on application made after due notice the other side approve.

2. Deposit in terms of provisions of section 8 (a) of the Appellate Procedure (Privy Council) Order, with the Registrar a sum of Rs. 300 in respect of fees mentioned in section 4 (b) and (c) of Ordinance No. 31 of 1909 (Chapter 85).

Provided that the applicant may apply in writing to the said Registrar stating whether he intends to print the record or any part thereof in Ceylon, for an estimate of such amounts and fees and thereafter deposit the estimated sum with the said Registrar.

Witness the Hon. Mr. Francis Joseph Soertsz, K.C., Acting Chief Justice, at Colombo, the Third day of August, in the year of our Lord One thousand Nine hundred and Forty-five and of Our Reign the Ninth.

Sgd. J. B. JAYASEKERA,
Deputy Registrar, S. C.

No. 49.

Application for Final Leave to Appeal.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

MERLE ALLES *nee* DE COSTA of Kandana *Plaintiff.*

30 No. 586/ D. C. Colombo

S. C. Nos. 118-119.

vs.

1. S. ALLES, Advocate of Colombo,

2. DR. T. S. M. SAMAHIN of Dambulla..... *Defendants.*

No. 48
Decree
of the
Supreme
Court
granting
Conditional
Leave to
Appeal
3-8-45
—continued.

No. 49
Application
for Final
Leave to
Appeal
24-8-45

No. 49
Application
for Final
Leave to
Appeal
24-8-45
—continued.

S. ALLES, Advocate of Colombo..... *1st Defendant-Appellant.*

vs.

1. MERLE ALLES *nee* DE COSTA of Kandana, presently of Effington, Alutmawatte Road, Colombo ... *Plaintiff-Respondent.*
2. DR. T. S. M. SAMAHIN of Dambulla, presently of the D. M. O's. Bungalow, Giriulla *2nd Defendant-Respondent.*

On this 24th day of August, 1945.

To

THE HON'BLE THE CHIEF JUSTICE AND THE OTHER JUSTICES
OF THE SUPREME COURT OF THE ISLAND OF CEYLON.

10

The humble Petition of the 1st defendant-appellant abovenamed appearing by Henricus Abraham Abeyewardene his Proctor states as follows :—

(1) That on the 3rd day of August, 1945, the 1st defendant-appellant abovenamed obtained conditional leave from the Hon. the Supreme Court to appeal to His Majesty the King in Council against the judgment of this Court pronounced on the 11th day of May, 1945.

(2) That the 1st defendant-appellant has in compliance with the conditions on which such leave was granted deposited with the Registrar of this Court a sum of Rs. 3,000 on the 23rd day of August, 1945, and has 20 by a bond dated the 23rd day of August, 1945, mortgaged and hypothecated the said sum of Rs. 3,000 with the said Registrar.

(3) The 1st defendant-appellant has further deposited with the said Registrar a sum of Rs. 300 in respect of fees for typewritten copies to be forwarded to the Privy Council.

(4) The 1st defendant-appellant's Proctor has on the 24th day of August, 1945, sent under registered cover copies of this application to the respondents abovenamed to their present addresses, viz. : in the case of the plaintiff-respondent to " Effington ", Alutmawatte Road, Mutwal, and in the case of the 2nd defendant-respondent who is the D. M. O., Giriulla, 30 to him as the District Medical Officer, Giriulla, giving notice of this application for final leave to appeal to His Majesty the King in Council.

WHEREFORE the 1st defendant-appellant prays that he be granted final leave to appeal against the said judgment of this Court dated the 11th day of May, 1945, to His Majesty the King in Council.

No. 49
Application
for Final
Leave to
Appeal
24-8-45
—continued.

Sgd. H. A. ABEYEWARDENE,
Proctor for 1st Defendant-Appellant.

I certify that the conditions under which Conditional Leave was granted have been fulfilled.

Signed. CLARENCE DE SILVA,
Registrar, S. C.

10
18/19/45.

No. 50.

No. 50
Decree
of the
Supreme
Court
granting
Final Leave
to Appeal
19-10-45

Decree of the Supreme Court granting Final Leave to Appeal.

GEORGE THE SIXTH, BY THE GRACE OF GOD OF GREAT BRITAIN,
IRELAND AND THE BRITISH DOMINIONS BEYOND THE SEAS, KING,
DEFENDER OF THE FAITH, EMPEROR OF INDIA.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

1. MERLE ALLES *nee* DE COSTA of Kandana, presently of Effington, Alutmawatte Road, Colombo ... *Plaintiff-Respondent.*
- 20 2. DR. T. S. M. SAMAHIN of Dambulla, presently of General Hospital, Colombo *2nd Defendant-Respondent.*

Against

S. ALLES, Advocate of Colombo *1st Defendant-Appellant.*

Action No. 586 (S. C. No. 118-119).

District Court of Colombo.

In the matter of an application by the 1st defendant-appellant dated 24-8-1945 for Final Leave to appeal to His Majesty the King in Council against the decree of this Court dated 11-5-45.

This matter coming on for hearing and determination on the 19th 30 day of October, 1945, before the Hon. Mr. E. A. L. Wijeyewardene, K.C.,

No. 50
Decree
of the
Supreme
Court
granting
Final Leave
to Appeal
19-10-45
—continued.

Puisne Justice, and the Hon. Mr. G. H. F. Cannon, Puisne Justice of this Court, in the presence of Counsel for the appellant.

The appellant having complied with the conditions imposed on him by the order of this Court dated 3rd August, 1945, granting Conditional Leave to Appeal.

It is considered and adjudged that the applicant's application for final leave to appeal to His Majesty the King in Council be and the same is hereby allowed.

Witness the Hon. Mr. Francis Joseph Soertsz, K.C., Acting Chief Justice, at Colombo, the 19th day of October, in the year of our Lord One thousand Nine hundred and Forty-five, and of Our Reign the Ninth.

Sgd. N. NAVARATNAM,
Deputy Registrar, S. C.

PART II.**EXHIBITS****1D18. Letter.****1D18.**Sumner Place,
Borella, 12-4-33.Exhibits
1 D 18
Letter
12-4-33

My dearest Mother,

I wrote to you some time ago but up to date I have had no reply to my letter. It looks as if you do not wish to give your consent to my marriage. I had hoped that you would take a reasonable view of this matter, and that everything would have been done without a hitch. I should like, at the very outset, to emphasise strongly that I only am to blame in this matter, in that I did not consult you at the start. I cannot emphasise this too strongly, as I do not wish blame to be laid at anybody's door but mine. I had hoped that with your consent I would be able to announce my engagement on my next birthday, but it seems that you wish to wash your hands of this, leaving me to do it on my own. In any case I intend giving Merle a ring on Monday next, the 17th instant. I wished very much that this great event in my life would receive your benediction, but the Fates seem to be against me. I was also hoping that I would be able to marry in June this year; I broached the subject to Paul, and he very kindly offered to extend to me the hospitality of his roof. I wanted to marry in June, as I am personally averse to a long engagement. Now it seems that I will have to enter on another era of my life without your benevolent blessing. I intend availing myself of Paul's kind offer, and will therefore get married in June. I sincerely hope that even at the last moment you will relent and will give me the supreme happiness of seeing you all in Church on the occasion of my marriage. No invitations will be issued, there will be a general notice inviting everyone to the Church, followed by a small reception for relations who care to come. This arrangement is completely in accord with my wishes, as I do not want people to notice your absence, in the event of your not coming.

I hope you will realise that I am in earnest in this matter, and that therefore I shall have the happiness of seeing you on that day.

With love,
I remain,
Yours affectionately,

STANNIE.

P 3. Last Will of J. M. Alles.**P 3.****No. 509.**P 3
Last Will of
J. M. Alles
27-10-38

This is the Last Will and Testament of me, Joseph Marcus Alles of 40 " Sri Mahal ", Tickell Road, Borella, Colombo in the Island of Ceylon :

Exhibits
P 3
Last Will of
J. M. Alles
27-10-38
—continued.

1. I hereby cancel and revoke all Last Wills, Testaments and Codicils and other writings of a testamentary nature whatsoever heretofore made or executed by me and in particular the Last Will bearing No. 505 dated the 13th day of August, 1937, attested by P. D. A. Mack of Colombo aforesaid, Notary Public, and declare this to be my Last Will and Testament.

2. I hereby appoint my nephew Doctor Reginald Francis William Alles Executor of and Trustee under this my Last Will and Testament and in the event of his being unable or unwilling to act I appoint my nephew Joseph Stanislaus Alles the Executor of and Trustee under this 10 my Last Will and Testament.

3. I hereby give and devise free from death, estate or any other duty or levy whatsoever my house and premises called and known as "Sri Mahal", Tickell Road, Borella, aforesaid to my wife Mary Theresa Alles subject to the conditions following, that is to say:—

- (a) that she shall so long as she is alive be entitled to hold and possess the same and take and enjoy the rents and income therefrom for her sole use and benefit ;
- (b) that she shall not mortgage charge sell or otherwise howsoever alienate or encumber the same, provided however that she shall 20 be entitled to lease the same for periods not exceeding three years at any one time ;
- (c) that upon her death the said property shall devolve on my nephew the said Doctor Reginald Francis William Alles subject to the conditions following, that is to say:—
 - (a) that he shall so long as he is alive be entitled to hold and possess the same and take and enjoy the rents and income therefrom for his sole use and benefit ;
 - (b) that he shall not mortgage charge sell or otherwise howsoever alienate or encumber the same. Provided however that he 30 shall be entitled to lease the same for periods not exceeding three years at any one time ;
 - (c) that upon his death the said property shall devolve on his male issue (if more than one in equal shares) absolutely. If my nephew the said Doctor Reginald Francis William Alles shall die leaving no male issue the said property shall go to and devolve on the male issue (if more than one in equal shares) of my nephew the said Joseph Stanislaus Alles absolutely. If my nephew the said Joseph Stanislaus Alles shall die leaving no male issue the said property shall go to 40 and devolve on the male issues (if more than one in equal shares) of my nephew Anthony Christopher Augustus Alles absolutely. If my nephew the said Anthony Christopher Augustus Alles shall die leaving no issue the said property shall go to and devolve on the male issue (if more than one in equal shares) of my nephew Clement Joseph Alles abso-

lutely. If my nephew the said Clement Joseph Alles shall die leaving no male issue the said property shall go to and devolve on the male issue of my nephew Michael Joseph Alles absolutely.

Exhibits
P 3
Last Will of
J. M. Alles
27-10-38
—continued.

In the event of all my nephews the said Doctor Reginald Francis William Alles, Joseph Stanislaus Alles, Anthony Christopher Augustus Alles, Clement Joseph Alles and Michael Joseph Alles leaving no male issue the said property shall go to and devolve on their female issue and the children (male and female) of my niece Celia Gunasekera *nee* Alles, wife of Fitzroy
10 Gunasekera, in equal shares absolutely.

4. I also give and bequeath to my said wife a sum of Five thousand Rupees (Rs. 5,000) to be paid to her as soon as possible after my death.

5. I further give and bequeath unto my said wife my motor car and all my household furniture and effects which I may be possessed of at the time of my death.

6. Subject to the payment of the above legacy of Rs. 5,000 to my said wife and the payment of my just debts (which at present amount to Rs. 26,000 more or less) estate and other duty if any and testamentary funeral and other expenses I give devise and bequeath the rest and residue
20 of my estate (hereinafter referred to as "My Trust Estate") unto my Trustee in trust to be held and possessed by him as such and for carrying out the trusts hereinafter created with full power and authority to my Trustee from time to time and at all times hereafter in his sole discretion if he shall think it advisable so to do to sell all or any of the properties belonging to my Trust estate and to invest all monies in his hands in the purchase of or on the primary mortgage of immovable property within the Municipal limits of Colombo or in the manner provided for under the Trusts Ordinance No. 9 of 1917 with power from time to time during the pendency of the Trust to recall, vary and re-invest all such monies. Pro-
30 vided however that my Trustee shall not sell my half share of Attukoralekanda Estate which I desire should always form part of my Trust Estate nor sell my house called "Credon" except in pursuance of the directions contained in Clause 15 of this my Last Will and Testament and provided further that it is my will and desire that my Trustee shall as soon as possible after my death sell my quarter share in Ettambagahayaya Estate :

7. I direct that my Trustee shall each month during the lifetime of my wife the said Mary Theresa Alles pay to her a sum of Rs. 400 for her sole use and benefit such payments to be made on or before the fifth day of each and every month commencing from the fifth day of the month
40 succeeding the date of my death :

8. I also direct that my Trustee shall as soon as conveniently possible out of the income derived from my Trust Estate pay to His Grace the Archbishop of the Roman Catholic Church in Ceylon a sum of Three thousand (Rs. 3,000) to be invested by His Grace on the securities authorised by the Trust Ordinance No. 9 of 1917 for the investment of Trust Funds and to be held by His Grace upon Trust out of the income arising

Exhibits
P 3
Last Will of
J. M. Alles
27-10-38
—continued.

therefrom to expend a sum of Rs. 18 annually for the saying of Masses for the purpose of the souls of the deceased members of my family and to expend the balance of the income therefrom for the saying of Masses for the repose of my soul in Purgatory. A receipt signed by His Grace the Archbishop for the time being shall be a sufficient discharge to my Executor and Trustee in this behalf :

9. I further direct that my Trustee shall as soon as conveniently possible out of the income derived from my Trust Estate set apart a sum of Rs. 20,000 for payment to my adopted son Cyril Bastian Sethupathy on his attaining the age of forty-five years and until he shall attain such 10 age my Trustee shall place the said sum of Rs. 20,000 to the credit of a Curatorship Case to be instituted for the said purpose in the District Court of Colombo and the income arising thereout shall be expended on the maintenance and education of my said adopted son. Upon my said adopted son attaining the age of twenty-one years the income arising from the said sum of Rs. 20,000 shall be paid to him until he attains the age of forty-five years.

Provided however that until such time as my Trustee shall have accumulated the said sum of Rs. 20,000 out of the income of my Trust Estate and shall have placed the same to the credit of the said Curatorship 20 Case and until the said sum so placed shall be paying a dividend, I authorise my Trustee to expend a sum not exceeding Rs. 50 a month out of the income of my Trust Estate upon the maintenance and education of my said adopted son :

Provided further that if my said wife thinks it desirable that the said sum of Rs. 20,000 shall be invested in the purchase of a property giving a suitable return in the name of my said adopted son my Trustee shall have the power to draw out of the said sum of Rs. 20,000 and so invest it subject however to the provisions that my said adopted son shall not be entitled to sell mortgage or in anywise alienate the property so purchased 30 until he shall have attained the age of forty-five years but until such time shall only be entitled to receive and enjoy the income and profits thereof :

Provided however that in the event of my said adopted son dying before he attains the age of forty-five years the said sum of Rs. 20,000 or any property purchased thereout as aforesaid shall devolve on his lawful issue (if more than one in equal shares) absolutely subject however to a life interest therein in favour of the widow of my said adopted son. In the event of my said adopted son dying before he attains the age of forty-five years leaving no issue the said sum of Rs. 20,000 or any property purchased thereout as aforesaid shall devolve on my nephew the said 40 Doctor Reginald Francis William Alles absolutely subject however to a life interest therein in favour of the widow of my said adopted son.

10. I direct my Trustee to pay to my adopted daughter Ruth Philomena a sum of Two thousand five hundred Rupees (Rs. 2,500) (to be accumulated by my Trustee out of the income of my Trust Estate), provided she marries with the consent of my wife or if my wife be dead then

with the consent of my Trustee such sum to be paid over to her immediately after her marriage :

In the event of my said adopted daughter choosing to remain in a Convent for a further period of five years I direct my Trustees to pay a sum of Rs. 20 monthly out of the income of my Trust Estate towards her board and other expenses :

I direct my Trustee, so long as my said adopted daughter remains unmarried to pay her a sum of Rs. 20 monthly towards her board and other expenses.

10 In the event of my said adopted daughter dying unmarried the said sum of Rs. 2,500 set apart to be paid to her on her marriage as aforesaid shall revert to and form part of my Trust Estate :

11. I hereby direct that my Trustee shall (after he has paid all my just and lawful debts funeral testamentary and other expenses death or estate duty, the aforementioned legacy of Rs. 5,000 to my wife, the aforementioned sum of Rs. 3,000 to His Grace the Archbishop of Colombo, deposited the aforementioned sum of Rs. 20,000 to the credit of the Curatorship Case for the benefit of my said adopted son and set apart a sum of Rs. 2,500 for payment to my said adopted daughter as aforesaid) 20 open an account to be styled " J. M. Alles Trust Account " in either the Chartered Bank of India Australia and China or the Mercantile Bank of India and deposit therein all the income derived from my Trust Estate :

12. I hereby direct my Trustee out of the said " J. M. Alles Trust Account " to pay the aforementioned monthly allowances of Rs. 400 to my wife, pay the monthly allowance of Rs. 20 to my said adopted daughter, pay the taxes and cost of repairs in respect of my houses " Credon " and " Sri Mahal " and all incidental expenses in respect of my Trust Estate and accumulate the balance in the said " J. M. Alles Trust Account " for a period of ten years after the date of the opening of such account :

30 13. After the said period of ten years shall have expired the amount standing to the credit of the said " J. M. Alles Trust Account " shall be applied as follows :—

(1) A sum thereout not exceeding Rs. 40,000 shall be utilised to build a Chapel in the name of St. Joseph in the Archdiocese of Colombo as this has been a life-long desire of my wife and myself ; and

40 (2) the balance lying to the credit of the said " J. M. Alles Trust Account " shall be invested in Government securities and the income derived therefrom used to help to pay the allowance to my wife and the taxes and cost of repairs in respect of my houses " Credon " and " Sri Mahal " and all incidental expenses in respect of my Trust Estate if the income from my Trust Estate shall not be sufficient for those purposes and the balance, if any, shall be accumulated until the death of my wife whereupon the amount so invested in Government securities and the accumulated income thereof shall be divided as follows :—

Exhibits
P 3
Last Will of
J. M. Alles
27-10-38
—continues.

Exhibits
P 3
Last Will of
J. M. Alles
27-10-38
—continued.

- (a) A one-sixth share thereof to my nephew the said Joseph Stanislaus Alles absolutely or if he be not alive at such date to his children in equal shares absolutely ;
- (b) A one-sixth share thereof to my nephew the said Anthony Christopher Augustus Alles absolutely or if he be not alive at such date to his children in equal shares absolutely ;
- (c) A one-sixth share thereof to my nephew the said Clement Joseph Alles absolutely or if he be not alive at such date to his children in equal shares absolutely ;
- (d) A one-sixth share thereof to my niece the said Celia Gune- 10 sekera *nee* Alles absolutely or if she be not alive at such date to her children in equal shares absolutely.
- (e) A one-sixth share thereof to my nephew the said Michael Joseph Alles absolutely or if he be not alive at such date to his children in equal shares absolutely ; and
- (f) A one-sixth share thereof to the persons mentioned in the list attached to this my Last Will and Testament in equal shares. If the said list is not attached to this my Last Will and Testament then it is my will and desire that the whole of this one-sixth share shall be paid to the Home 20 for the Aged, Darley Road, Colombo.

14. After the expiration of the period of ten years mentioned in Clause 12 hereof and after the death of my wife the Trust hereby created by me shall cease and determine and my Trust Estate with the exception of my house "Credon" shall go to and devolve on my nephew the said Doctor Reginald Francis William Alles subject to the condition that he shall not sell mortgage or otherwise alienate or encumber the same but only enjoy the income and profits therefrom during the term of his natural life and after his death, the same shall go to and devolve on his male issue (if more than one in equal shares) absolutely. If my nephew the said 30 Doctor Reginald Francis William Alles shall die leaving no male issue the same shall go to and devolve on the male issue of my nephew the said Joseph Stanislaus Alles (if more than one in equal shares) absolutely. If my nephew the said Joseph Stanislaus Alles shall die leaving no male issue the same shall go to and devolve on the male issue of my nephew the said Anthony Christopher Augustus Alles (if more than one in equal shares) absolutely. If my nephew the said Anthony Christopher Augustus Alles shall die leaving no male issue the same shall go to and devolve on the male issue of my nephew the said Clement Joseph Alles (if more than one in equal shares) absolutely. If my nephew the said Clement Joseph 40 Alles shall die leaving no male issue the same shall go to and devolve on the male issue of my nephew the said Michael Joseph Alles (if more than one in equal shares) absolutely.

In the event of all my nephews the said Doctor Reginald Francis William Alles, Joseph Stanislaus Alles, Anthony Christopher Augustus Alles, Clement Joseph Alles and Michael Joseph Alles leaving no male issue

the same shall go to and devolve on their female issue and the children (male and female) of my niece the said Celia Gunasekera *nee* Alles in equal shares absolutely.

Exhibits
P. 3
Last Will of
J. M. Alles
27-10-38
—continued.

15. As regards my house called "Credon", I direct that after the death of my wife and after the expiration of the period of ten years mentioned in Clause 12 of this my Last Will and Testament the same be sold and the proceeds divided in the same manner as set out in Clause 13 (2) (a) (b) (c) (d) (e) and (f) of this my Last Will and Testament.

16. It is my will and desire that in the event of my said adopted daughter remaining unmarried after the death of my wife and after the expiration of the period of ten years contained in Clause 12 of this my Last Will and Testament that the person or persons who shall benefit under Clause 14 of this my Last Will and Testament shall be responsible for the payment to her of the monthly allowance of Rs. 20, provided for her under Clause 10 hereof.

In witness whereof, I the said Joseph Marcus Alles have set my hand to this my Last Will and Testament at Colombo aforesaid on this 27th day of October One thousand Nine hundred and Thirty-eight.

Sgd. JOSEPH M. ALLES.

20 (Attestation omitted).

Sgd. J. A. V. MODDER,
Notary Public.

This is the list of persons referred to by me in Clause 13 (2) (f) of my Last Will and Testament No. 509 dated 27th October, 1938, attested by J. A. V. Modder of Colombo, Notary Public :—

- (1) The daughters of my nephew Charles Fernandopulle.
- (2) The son of my nephew Ignatius Fernandopulle.
- (3) The daughters of my niece Mary Fernandopulle.
- (4) The son of my nephew Joseph Fernandopulle.
- 30 (5) The daughter of my niece Mary Alles widow of the late Dionysius Alles.

Colombo, 12th August, 1939.

Sgd. JOSEPH M. ALLES.

1D6. Agreement Signed by 1st Defendant and his Brothers.

1D6.

We the undersigned Joseph Stanislaus Alles, Anthony Christopher Augustus Alles, Clement Fredrick Theophilus Alles and Michael John Alles all of Ward Place in Colombo do hereby acknowledge that in consenting to our brother Reginald Francis William Alles drawing the sum of Rupees 40 Twenty-seven thousand one hundred and twenty-five (Rs. 27,125) lying in Court to the credit of case No. 75/L of the District Court of Colombo we do so in order that he might with the said sum provide for our sister Celia Mary Dorothy Gunasekera by putting up a house for her.

1 D 6
Agreement
signed by
1st De-
fendant
and his
brothers
21-6-39

Exhibits
1 D 6
Agreement
signed by
1st De-
fendant
and his
brothers
21-6-39
—continued.

We further acknowledge that we have done so of our own free will and that we have no claim or demand whatsoever in respect of the said sum, that we have left to him the entire discretion in the matter of the putting up of the said building and of the expenditure of the said sum in the putting up of the same. We agree to raise no questions at any time with regard to the expenditure of the said sum or to the construction of the building.

Colombo, 21st June, 1939.

Sgd. STANISLAUS ALLES,

Sgd. A. C. A. ALLES,

Sgd. CLEMENT ALLES.

10

Witnesses :

Sgd. H. A. ABEYAWARDENE.

1930

Sgd. M. J. ALLES.

P 6
Letter
11-9-40

P 6. Letter.

P 6.

The Resthouse,
Mannar, 11-9-40.

My darling Merle,

Well, I got here this morning after a most tiresome journey. The train jolted terribly and I got hardly any sleep. The case was started this morning and I have been on my feet all day, with the result that I am completely washed out and am looking forward to an early dinner and bed.

The case is going on quite merrily and we have finished over half the witnesses. If I am lucky and defence is not called upon I may be able to catch to-morrow's train down. Otherwise I think I will be able to leave on Friday night. In any event I will wire you before I leave so that you can send the car to the station.

I did not get my fee today so I am unable to send you the money. I will wire you the money to-morrow and you can go round and pay the bills as arranged.

I hope you gave my message to Sri. Please remember me to Sri and Mrs. Sri should you meet them or 'phone them

I hope Kodai is not being too troublesome. How is my darling Hortense. Please give her a big kiss from her daddy and big hug too.

This place is quite deserted and I am the only occupant of the rest-house. You can just imagine what that means, particularly after the hectic time our gang has been having recently.

I miss you all terribly and am making a gigantic effort to be back in Colombo earlier than expected. I am rushing this letter to catch the mail and I have about five minutes to spare. We sat from 9-30 to 1-30 today and again from 2-30 to 5-30, so I am feeling like a wrung out rag.

40

Lots of love and kisses from

Ever yours,
STANNIE.

P 42. Card.

P 42. Card.

With Best Wishes

1940.

from

Mani and Sri

Exhibits
P 42
Card
(1940)

P 40A. Extract from P40, Book of Account of Plaintiff.

For January, 1941. 8-1.

				Rs.	c.
	Mary left 13-2-41	...	...	12	00
	Ayah	...	...	7	00
10	Cookie	...	...	8	00
	Boy	...	...	8	00
	Gardener	...	...	pd. 12	00
	Dhoby	...	...	13	00
	Bathroom Cooly	...	...	2	50
	Vimto	...	...	1	12
	Firewood	...	...	pd. 2	50
	Eggs	...	...	39	00

P 40 A
Extract
from
P 40 Book
of Account
of Plaintiff
(January
1941)

P 5. Letter.

P 5.

The Resthouse,
Jaffna, 3-1-41.P 5
Letter
8-1-41

20

My darling Merle,

I suppose you must have guessed that I got here safely. I could not write yesterday as I had to get ready in my work.

It is quite warm here. We started this morning at 11 a.m. and are well under sail now. Old Cannon is quite nice and has been very nice to us so far. I hope you enjoyed yourself at Bopitiya yesterday. How is Sambo. I hope he is looking after you all. Did you remember to send my letter to the Electrical Dept. and to 'phone Kodagoda *re* the sweep tickets?

30

I hope your sister and brothers are not worrying your life out. How is my darling Horty? Does she look for her daddy? Please give her a big hug and kiss from me. Please remember me to all our servants. I trust they are not quarrelling. My best regards to all our Colombo friends.

Lots of love.

Ever yours,
STANNIE.

Exhibits

P 7
Letter
7-2-41

P 7. Letter.

The Resthouse,
Jaffna, 7-2-41.

My darling Merle,

Thanks very much for your letter of the 4th instant, which I received yesterday. I hope you remembered to send my cheque to the Electrical Dept., and 'phone up Kodagoda. Did Brito Bros. 'phone you up about my gown? If they have seen that it is an exact replica of my old one and then tell them to despatch it to Jaffna for me, so that I can use it next week.

10

Your telegram about Mrs. Waldo gave me a real shock. Apparently she died soon after the operation because she was to be operated on Wednesday and you wired at noon on the same day. I do not see your brother's name among the attendance at the funeral.

I am very glad that all of you had such an enjoyable time last Sunday. What is the news of Kodi? What has Dr. G. decided to do? Please ring up Mrs. Sri and tell her I made enquiries and also that I was sorry to hear from you that she has been ill.

Please ask Sambo when he is coming for that threatened week-end. We have not finished the first case started on Monday as yet. Cannon is 20 terribly slow.

Have the Luds been round since I left? Please give Horthy a big hug and kisses from me.

With lots of love and kisses.

Yours ever,
STANNIE.P 9
Letter
14-2-41

P 9. Letter.

The Resthouse,
Jaffna, 14-2-41.

My darling Merle.

80

Thanks very much for your letter of the 11th instant. Our letters must have crossed. I have got some more yams collected; I shall send them by the next Fiscal's escort. I am also returning herewith Mrs. Solomons' letter.

I see a very good photo of Festro and live birds in last night's Times. It must have been a swell show.

I hope you had a nice time with C. O. P. and Dot Dot at "London Calling" yesterday. It must be a very good show. I am sorry I shall miss the one carnival I was anxious to attend. I received the gown but I am not using it as Edward says it is too good for Jaffna. The Krishna-40 ratnes are leaving Jaffna about the 10th of next month. I hope you will be able to come up for the week-end beginning the 28th February, if I am still here.

By the way, tell C. O. P. I have got him four very good grafts. A friend of mine is hoping to go to Colombo this evening so he may leave them at home for me.

Exhibits
P 9
Letter
14-2-41
—continued.

Please give my Horty a big kiss and hug from me.
With lots of love and kisses to you,

Ever yours,
STANNIE.

Salaams to Sambo. What about his week-end up here.?

P 8. Letter.

10 P 8.

The Resthouse,
Jaffna, 18-2-41.

P 8
Letter
18-2-41

My darling Merle,

Thanks very much for your letter of the 17th instant. By last night's mail I sent you a parcel of yams and the four mango grafts for C. O. P. Please inform him when they arrive.

Please write to Mrs. Solomons and make your reservations from the 20th proximo. I am glad you have been to see "London Calling". I am sorry I have missed it. Surely you did not expect that anybody would call at home? We have now become the unwanted. But, please God, 20 a day will come when we will show them a thing or two. We are not asking for mercy now; let them not ask for it when we are dictating our terms.

I am glad Mrs. Sri got my telegram. I suppose it is too much to expect her to thank me for it till I meet her again in Colombo. I am glad Tony is going away on Sunday. I hope your other brother is not going to change his mind about going away at the end of this month. I do hope the 'phone is not being used unnecessarily. By all means, let Mr. & Mrs. Lud. come up with you. I will arrange a room for them here. Can you not bring Horty up with you? I am dying to squeeze her again. Please 30 tell Sam I am looking forward to his visit next week-end. I do hope that what O. E. G. told you is not another of his usual stories. He has put me off with them for years. I am much better now though I have not got over my bad throat yet.

A hug and kiss for Horty. How is Kodi?
Love and kisses.

Ever yours,
STANNIE.

P 26. Letter.

P 26.

The Resthouse,
Jaffna, 20-2-41.

P 26
Letter
20-2-41

40

My darling Merle,

Thanks very much for your letter of yesterday's date and I note its contents. I do hope C. O. P. will like the grafts I have sent him.

Exhibits
P 26
Letter
20-2-41
— continued.

Why did you not send some yams to Tom? Have you rung him up since I left? You have always known my mother to be an interfering busy-body and I have always warned you not to give her even the opportunity to talk about you.

Tell Sam not to worry about all this talk. It seems to have restarted since I left Colombo.

Tell Dad not to worry about our future. Now that we are getting on again he is trying to be nice again. So he has managed to get Merita to his place from the 1st. I suppose the next thing will be for him to get a chaperone and nurse for her, for what better person than Phyllis? There is already an invitation for you for dinner on the 1st here from Mr. & Mrs. Anthonipillai, you remember meeting them in Batticaloa.

Please ring up Marcus and tell him I am still awaiting a reply to my letter. Last night there was a men's dinner party at Vernon's and Eris and I got back about 11-30 p.m. Next Wednesday I have been invited to dinner by the G. A., Mr. Prasad. I have heard nothing about you here nor have I received any anonymous letters.

A hug and kiss for Horty.

Fondest love and kisses,

STANNIE. 20

P 39
Letter
25-2-41

P 39. Letter.

P 39.

The Resthouse,
Jaffna, 25-2-41.

My darling Merle,

Thanks very much for your letter which I received this morning. I did receive the flannels and tie you sent by Edmund. So you cannot find somebody to come up with you next week-end. I was hoping that even Dots would come up. Now I suppose you will have to travel alone. But I am wondering what you are going to do about baby. What about bringing her up? Kris. is having a party on Monday next the 3rd instant and they want you to wait for it. So please buy a return ticket for the journey and also a return sleeping berth ticket. You can get back on Tuesday night. I hope you will get an ayah by that time.

I wonder whether your brother really intends going away. His end of February has now become the first week of March.

I hope you sent some yams to Tom and Aunty Sellam. You will have to make arrangements for a car to meet you at the Fort station on Wednesday morning the 5th proximo. Please attend to this before you leave on Friday next. I will meet you at the station.

I am enclosing herewith cash cheque for Rs. 70 for your train fare and the payment of the enclosed bills.

With love and kisses,
Yours ever,
STANNIE.

Exhibits
P 39
Letter
25-2-41
—continued.

A big hug and kiss for Horty.
S. A.
Please do not send receipts here.
S. A.

10

P 10.

P 10. Letter.

The Resthouse,
Jaffna, 8-3-41.

P 10
Letter
8-3-41

My darling Merle,

Thanks for your letter of the 6th instant. I am glad to hear you enjoyed your stay in Jaffna : in a way I am sorry you went because it was terrible when you went away. I am glad Asoka shared your dinner that night. Mariam is very pleased at the compliment you paid his dinner.

I am glad you gave my message to Tom I do hope he will be confirmed as S. G. Then there is a silver lining for us. I hope you have got
20 a good ayah for baby and that Albert has come now that Rajah must have gone away with his boy. If he has please shift my writing table to the office room.

Sam has promised to come up so often and disappointed me that I am beginning to give up hope altogether.

Please do not worry about my mother's doings ; all of them are a law unto themselves. They can ride roughshod over everybody's feelings but nobody can dream of doing the same to them. I do not think it necessary to send baby to Laurentum. Please tell Lily that mother has not come to our place for this year yet. Please give baby a big hug and kiss from
30 me.

Fondest love and kisses,
Ever yours,
STANNIE.

P.S.—I am enclosing herewith cash cheque for Rs. 50.

P 15.

P 15. Letter.

The Resthouse,
Jaffna, 11-3-41.

P 15
Letter
11-3-41

My darling Merle,

Thanks very much for your letter of yesterday's date. It is not
40 that I had forgotten your existence but I was expecting a letter from you on your return to Colombo and I was awaiting your letter. I will send you the cabin trunk one of these days. I saw the photograph of the Orchid Circle Show in yesterday evening's Times. I saw Hilary and Cath. in it and I thought that you may have gone with them.

Exhibits
P 15
Letter
11-3-41
—continued.

I am so sorry to hear about Mrs. Sri. I am writing to Sri too by today's mail. I thought your brother had already left. Please see that he goes soon and he need not bother to come and see us again. I have always told you he is a most ungrateful chap. Whatever he has told you has been told to him by the old man : so find out from the old man in what way we are responsible for his present situation and let me know. I will then deal with the matter. The father and son think they can rule the world with their mouths. By your next letter I wish to be informed that your brother has left our house for good. How is my little Horty? Give her a big hug and kiss for me.

10

Fondest love and kisses,
Yours ever,
STANNIE.

P 33
Letter
18-3-41

P 33. Letter.

The Resthouse,
Jaffna, 18-3-41.

My darling Merle,

Just a line to inform you that I will not be leaving this before Friday next and even that is doubtful : it all depends on the state of the case. So please do not defer your going to Bandarawela as my movements are so uncertain.

Before you leave please tell Sambo to be good enough to re-address my letters here if I am staying on beyond Monday next. I shall write to him about my movements.

Re the tomatoes, etc. I am afraid I cannot send them before you leave for Bandarawela. I will arrange for them on your return to Colombo.

I am in a hurry to catch the mail. A big hug and kiss to Horty.

Love and kisses,
Ever yours,
STANNIE.

30

I hope you rang up the office about my batta.
S. A.

P 12
Letter
5-4-41

P 12. Letter.

The Resthouse,
Jaffna, '5-4-41.

My darling Merle,

I have just received orders that I am to continue prosecuting here after the Easter recess. Thank God for that. I have decided against going

down by car with Wirasinghe. In all probability I will be leaving this on Tuesday by the night mail and will be in Colombo for the holidays. If I get a car I will come up and see you in Bandarawela. I do not know what we are going to do about a car. I must see about it in Colombo even buying a good second-hand car.

Exhibits
P 12
Letter
5-4-41
—continued.

I hope you are having a good time up there. How is my darling Horty? I hope she is picking up nicely and will be all the better for the change. Please give my regards to Monty and Amara.

It looks as if I am going to be stuck here for some time once we begin after the vacation as there are some very heavy cases to be tried.

Love and kisses,
Ever yours,
STANNIE.

P 13. Letter.

P 13.

The Resthouse,
Jaffna, 23-4-41.

P 18
Letter
23-4-41

My darling Merle,

Thanks very much for your letter of yesterday's date, which I have just received. I hope you have received the letter I posted you on Monday.

20 I am glad you had such a lovely time up in the hills. By all means go again this week-end. Surely you know that I have not the slightest objection to your going anywhere with my friends. I do hope you will have as enjoyable a time as last week. I suppose you will leave Horty at Sri's again for the week-end. I really cannot understand why you think I am in love with Mrs. Sri. I think she is an extremely nice sort and I do like her company. There is nothing more in it than that. We went out together to the pictures and had dinner on Friday and that was all. I either like people or dislike them. I do not have friends but the few friends I have I like to keep. That is my attitude. Please write to Mrs.
30 Solomons and tell her that you have instructed me to deduct Rs. 25 from her bill, otherwise it would not look nice. I am sorry to hear about Horty; please get Sam to see her and prescribe something. I will try and send

Exhibits
P 13
Letter
28-4-41
—continued.

you all the money you need by the end of the month, when my salary comes in. If you happen to go to the Fort please take my gold watch into Punchi Singho's and get them to attend to it and tell them not to send it here. I hope you remembered to 'phone Kapadia's and ask them about our receipt. I have sent a cheque covering letter to the Telephone Dept., so I do not anticipate any trouble for you there. Please give my Horty a big hug and kiss for me.

With lots of love and kisses.

Ever yours,
STANNIE. 10

There is a parcel of mats in the storeroom. Suppa sent them to us from Batticaloa.

S. A.

P 17
Letter
28-4-41

P 17. Letter.

P 17.

The Resthouse,
Jaffna, 28-4-41.

My darling Merle,

Thanks for your letter of the 26th. I was wondering what had happened to you and did comment on your silence to Kodar in my letter of her birthday wishes to her. Now I can quite understand your silence. 20 As usual you have to do all the donkey work so that others may have a good time.

I understand from Sri that his sister was going up with them for a short time to Bandarawela. By all means send Horty up but I would rather you sent her after Sri's sister has come back. She is a rather peculiar woman and may have some comments to make. Anyhow I leave it entirely to you. I am glad you spoke to Kapadias. I hope you have got the receipt. Please keep it with you.

The heat here is just terrific. Just yesterday there has been a little wind. I have met Eddie and Mr. Nihill. The latter is very charming 80 indeed. When we are all back in Colombo I must invite him for a meal. He is keen about tennis and plays daily, even on Sundays. The mango season is not due till next month. But I will try to send you some tomatoes and drumsticks. Give my Horty a big hug and kiss for me.

Lots of love and kisses,

Ever yours,
STANNIE.

Exhibits
1D17.
Pelmadulla
Resthouse
Visitors'
Book
(1941)

1D17. Pelmadulla Resthouse Visitors' Book.

767

Month	Arrival		Date	Departure		Name	Address
	Date	A.M.		P.M.	Date			A.M.	P.M.
1941	10th	7	10th	8		(Signed) Illegible	Colombo
April	10th	8	10th	9		Mr. & Mrs. G. N. de Silva	Colombo
	10th	8	10th	9		W. D. Harrison	S. India
	10th	11-45	10th	12-10		Mr. & Mrs. P. R. Krishnaratne	R'pura
	"	"	"	"		Miss & Master Krishnaratne	"
	"	"	"	"		Mr. A. O. Wirasinghe	Jaffna
	"	"	"	"		Mr. S. Alles	C'bo
	10th	11-45	10th		12-40	Miss H. Wanigasekera	Colombo
	"	"	10th		"	Mr. L. Wijesinghe	"
	10th	"	10th		1-30	R. Gunawardane	Kosgama
	10th	1	10th		1-30	J. C. Kotalawala	Badulla
	10th	1	10th		2-30	A. P. Craib	Ratnapura
	10th	1	10th		"	F. S. Kennedy	Pelmadulla
	10th	2	10th		2-30	B. D. S. de Zilva	Matara
	10th	2	10th		2-30	Mr. & Mrs. D. Swan	"
	10th	2-35	10th		2-50	E. C. Rice	Colombo
	"	"	"		2-50	G. E. Georgeson	"
	"	"	"		4-30	H. V. J. Edirisinghe	Colombo
	10th	4	"		4-30	A. R. Mc Feslane	Colombo
	10th	4	10th		4-30	Signed Illegible	Colombo
	10th	5	10th		5-30	S. S. Jayawickrema	Colombo
	"	"	"		"	L. S. B. Perera	"
	"	"	"		"	Signed Illegible	"
	"	"	"		"	Signed Illegible	"
	10th	8	"		8-45	C. E. Mears	Balangoda
	10th	8	10th		8-45	Dr. A. C. van Dort	Colombo
	10th	8	10th		8-45	R. L. Bartholomeuz	Colombo
	10th	8	10th		8-10	Signed Illegible	Colombo
	10th	8	10th		9-10	F. S. Kennedy	Pelmadulla

Examined
Correct:

M. D. P. GOONERATNE,
Chief Clerk, P. R. C.

True Extract:

D. WANASUNDERA,
for Chairman, P. R. C., Sab.
Ratnapura, 20th January, 1943.

Exhibits
P 16
Letter
1-5-41

P 16. Letter.

The Resthouse,
Jaffna, 1-5-41.

My darling Merle,

I am terribly upset over this news about Sri. It strikes me that we are getting deeper and deeper into trouble. I think it best that we should have no friends at all, rather than have these scenes in our house. A very bad show, indeed. Surely Laddie, knowing Sri's nature, should have been a little more careful, however much he wanted to be the gentleman. It would have been far better if Sri and Mrs. had not been invited in view 10 of the fact that Laddie & Co. were invited for the party.

I must admit that Sri's has been altogether a very bad show indeed. The whole trouble has been his lack of education, with the result that he has outbursts like this. I do wish he would control his temper.

Well I suppose the best thing would be to drop the Sris and carry on without them. I am sorry this should have happened in my absence. I think you better drop all parties for the present and go very slow, doing very little entertaining. This sort of thing reflects very badly on us and I do not want to be a laughing stock to the world.

I am surprised that Anta has found the time to come to our house. 20 How did she manage it ?

I will send you the money in a day or two. I hope Rajah has paid his money. How is my Horthy? Please give her a hug and kiss for me. Please ring up Marcus and ask him whether he received my letter and whether he has done what I told him to do.

With love and kisses,

Ever yours,

STANNIE.

P 18
Letter
4-5-41

P 18. Letter.

The Resthouse, 30
Jaffna, 4-5-41.

My dear Merle,

Thanks for your letter of the 2nd instant. You have completely failed to understand the purport of my letter. I did not in any way say that Sri's behaviour was correct. In fact I went so far as to say that it would have been far better if Sri and Mrs. Sri had not been asked to the party.

Please understand that I am in no way upset that you have fallen out with them. I have been completely out of touch with the Colombo friends for the last three months and one more or less will not make any 40 difference. So much for this incident on the 28th.

The weather here is just terrible and my whole body is covered with prickly heat. I wonder how much longer this heat is going to continue.

I wonder whether you are having any rain in Colombo. I am enclosing herewith a cheque for Rs. 50. Please carry on for the present until I get my batta for April when I will send you all I can.

Exhibits
P 18
Letter
4-5-41
—continued.

Both your father and brother seem to think that they can rule the world with their mouths. So far I must say they have succeeded. Please give my Horty a big hug and kiss for me.

With love and kisses,
Ever yours,
STANNIE.

10
P 34.

P 34. Letter.

The Resthouse,
Jaffna, 7-5-41.

P 34
Letter
7-5-41

My darling Merle,

Thanks for your letter of yesterday's date and am surprised at its contents. I was busy all day on Sunday with a very heavy case so I wrote to you on Monday enclosing a cheque for Rs. 50. You should have received it yesterday. Please let me know on receipt of this letter whether you received my previous letter enclosing the cheque, otherwise I shall have to write to the Bank to stop payment.

20 Surely you do not expect your dad or your brother to do anything for you. As for your brother I suppose you will still go out of your way to do things for him.

I am very sorry you have been inconvenienced but it was really not my fault. I do hope you have received my letter and cheque by now.

It is still terribly hot here and my whole body is covered with prickly heat. I do hope it will soon get cooler. Please ring up Marcus and tell him I have not heard from him yet but to attend to my little job without fail soon.

Please give my Horty a big hug and kiss from me.

30

With love and kisses,
Ever yours,
STANNIE.

P 28.

P 28. Letter.

Jaffna, 9-5-41.

P 28
Letter
9-5-41

My darling Merle,

Thanks for your letter of yesterday's date. I will try and send you some more money in a short while. I am very sorry that mother behaved in the way she did. I suppose she acted on the advice of her eldest son, who has now become the keeper of other people's morals besides his own. 40 I am writing to mother too by this mail, telling her what I think of her action.

Exhibits
P 28
Letter
9-5-41
—continued.

Please 'phone Rajah and tell him I have received a bill from the Telephone Department and I find he has not yet settled the January account for Rs. 28.95. After he has settled it I will send him my half-share provided he settles your account too. Please give him this message from me. When I met him in Colombo he said he would settle it by the end of April and he has not done so yet.

I am enclosing herewith a couple of snaps ; please keep them carefully. They were taken by Eddy.

Please give my Horty a big hug and kiss from me.

With love and kisses, 10
Ever yours,
STANNIE.

P 38
Letter
9-5-41

P 38. Letter.

P 38.

The Resthouse,
Jaffna, 9-5-41.

My dearest Mother,

I have just heard from Merle about what you said and did yesterday and I am very distressed about it. If you did it on your own initiative I can only call your action impetuous : if you did it on *anybody's* advice I would say you were ill-advised. If it is the latter alternative, as I propose 20 to find out when I get back that interfering busybody is going to have eternal regret that he or she, as the case may be, interfered in my domestic affairs. For the last few years we have been going our way, without interfering with yours. Now that matters have come to a head I can speak quite plainly. The whole of last year you did not care to invite us to a meal, though I do know you had many family reunions : this year you did not care to pay us an ordinary New Year call, although we had done our duty by you. Even my sister did not call on me for the New Year. No doubt she is a big lady now !!!

My only regret in life is and will always be that I signed away my 30 money to build my sister's house. Ordinary courtesy and decency demanded that whoever was responsible for the building of the house should at least show me the plans considering that I too had given my money : but the little tin god who was in charge thought only my money good for the purpose but not my company. In fact you and your children have treated us completely as social outcasts and lepers and now you have got to the stage when we cannot even choose our friends, except with the approval of the powers that be !!

I am very sorry that you have interfered in what is a purely domestic concern of mine and as I said before I think you have been very ill-advised 40 because the matter will not end here. I will not at any time brook any unwarranted interference in my affairs. I could understand your attitude

if you were giving me a monthly allowance. But what you all seem to want is power without responsibility, the right to control the lives of others without giving anything in return.

Exhibits
P 38
Letter
9-5-41
—continued.

All of you adopt this attitude because we are poor : so you think you have the right to ride roughshod over our feelings. I hope and pray to God that some day I will be in a position to hit back. I have never at any stage asked for quarter or mercy. Let others do the same when their turn comes.

I am really very sorry this has happened. You know very well we
10 are struggling to get on with no help from any quarter : nor have I asked for help. All I ask is to be allowed to live my own life in my own way. Surely, that is not asking too much !!

Yours affectionately,
STANNIE.

P 19. Letter.

P 19.

The Resthouse,
Jaffna, 12-5-41.

P 19
Letter
12-5-41

My darling Merle,

Thanks for your letter of the 10th, which I received this morning.
20 Tell Sam not to worry, he can come to *my* house so long as I have no objections as often as he likes.

Please do not bother about Rajah. I have written to the Telephone Dept. about him. He is getting more like his father daily.

Do not bother to reply to Sri's letter. I have sent him a cheque and a covering letter and I have told him not to bother to acknowledge receipt of my cheque as I have sent him a crossed cheque.

I am glad you liked the drumsticks. That seems to be the only thing available in Jaffna now. Nothing else available! No doubt Edmund must have told you all about it. How is my Horty? Has she
30 got over all her boils. Please have her vaccinated as soon as she is fit owing to the smallpox epidemic. I will send you the balance money as soon as I get it from the office.

Love and kisses,
Ever yours,
STANNIE.

P.S.—Eddie sends his love.
S. A.

P 20. Letter.

P 20.

The Resthouse,
Jaffna, 14-5-41.

P 20
Letter
14-5-41

40 My darling Merle,

Thanks for your letter of the 12th instant. I received it only this morning. I am glad Tom has been round to see you. I have written to E. G. P. already. I hope things will pan out nicely for us hereafter,

Exhibits
P 20
Letter
14-5-41
--continued.

I also hope our Tom is to be confirmed as S.-G. Did he not say anything about it? I hope he is not going to miss the 'bus after all these years of waiting. I wonder whether you liked the drumsticks. The mango season has not started yet. If I can get some I will send them down also some tomatoes. How are my mango grafts getting on? I hope the gardener is looking after them and clearing them round the roots. Please see to this as they are just coming into bearing.

How is my Horty? I hope she is well now. Please give her a big hug and kiss for me. I sent Sri a cheque on Saturday. He must have received it by now. 10

With love and kisses,
Yours ever,
STANNIE.

P 45. Letter.

P 45
Letter
28-5-41

P 45.

The Resthouse,
Jaffna, 28-5-41.

My darling Merle,

Thanks for your letter of the 27th instant. I do wish we had a little of the rain Colombo is having. I am glad to hear you had a pleasant week-end in Galaha. 20

I am enclosing herewith a cash cheque in your favour for Rs. 125. Please make it go as far as possible as I have to send Mrs. Solomons a cheque too by the end of the month.

I am sorry boy has to leave us again. He is a good servant. But as his eczema is coming on again he must go.

We cannot run the risk of his giving the infection to people in the house. I am returning herewith the snaps. They are quite good. Amara seems to have got fat in B'wela. So poor Tom has been cheated of his job again. Poor chap. I want to write to him but again I do not want to do it as he must be feeling very bad about it. 30

I am glad to hear my Horty is getting on splendidly. Give her a big hug and kiss from me.

Love and kisses,
Ever yours,
STANNIE.

P 14. Letter.

P 14
Letter
4-6-41

P 14.

The Resthouse,
Jaffna, 4-6-41.

My darling Merle,

Thanks for your letter of the 2nd instant. I am glad to hear Horty's 40 vaccination has taken effect but that she has had no fever.

I am keeping quite well and the weather has improved very slightly with a cool breeze springing up. The carnival is on in full swing now. Believe it or not, but I have gone to it, merely because there is absolutely

nothing else to do in this one-horse town. Nihal and I go over about dinner time and have dinner there. Today we have both been invited to be Mr. Nihill's guests at dinner at the carnival grounds and tomorrow we are going as Manih's guests.

Exhibits
P 14
Letter
4-6-41
—continued.

I am afraid I will not be able to come down for this week-end because of the expense.

I am glad to hear Joe and Girtie like the veil you ordered for Annette. I hope you have got a good boy.

I have just received yesterday's letter. By all means please go. I have told you time and again not to wait for permission but to go anywhere with my friends.

Love and kisses to Horty and yourself,
Ever yours,
STANNIE.

P 29. Letter.

P 29.

The Resthouse,
Jaffna, 16-6-41.

P 29
Letter
16-6-41

My darling Merle,

Thanks for your letter of the 14th which I received today. So your brother thinks you both are fit enough to be seen with him at public dances! He seems to have changed his outlook in recent months.

I am glad that Tom has moved in to his new place and that you went round to the new place. Dr. C. I. has arrived here and will be going back tomorrow evening. I got myself vaccinated yesterday in view of the smallpox epidemic both here and in Colombo.

It looks as if after eight years of married life you and I are going to be parted on our wedding anniversary. If I could afford it I would really come down for the next week-end but I suppose those good things are not for poor people like ourselves. Anyhow better luck next time.

I am very happy to hear that my darling Horty has got over her vaccination and her boils. I do hope, I will be able to be in Colombo for her birthday. Please do not ask anybody from Laurentum or Lisieux. Those who remember can come round and that applies to your brother as well.

I hope the grafts are growing well and that you all have enjoyed the fruit. Please tell me how you liked them. The pickles were delicious. I suppose I will get into serious trouble if I do not bring the bottles back.

Love and kisses to you and Horty,
Ever your,
STANNIE.

40

I am enclosing herewith Mrs. Solomons' account and her letter acknowledging receipt of my cheque.

S. A.

Exhibits
P 30
Letter
19-6-41

P 30. Letter.

The Resthouse,
Jaffna, 19-6-41.

My darling Merle,

Thanks for your letter and am surprised at its contents. I note you have dated your letter 17th although I received it only this morning. In my last letter I gave you all the available news : so I have really nothing to add. Mr. & Mrs. Quentin Fernando have invited us for dinner on Saturday next and Mr. & Mrs. Prasad on Wednesday next. The weather is still very hot and when it blows it blows a gale. My vaccination did not re-act after all and the marks are already disappearing. I hope I will be able to be in Colombo for my Horty's birthday at least.

Please see that she does not go to Laurentum.

With love,
Ever yours,
STANNIE.

P 4
Letter
20-6-41

P 4. Letter.

The Resthouse,
Jaffna, 20-6-41.

My darling Merle,

20

Thanks for your letter of yesterday's date. You must have received my letter of yesterday, today, but I am replying to this letter at once, as otherwise you will get frantic again.

I am terribly sorry I will be unable to be in Colombo tomorrow much as I would like to be. But we are now getting to a very critical stage of the case as the official witnesses are now being called. We have set apart this week-end to review all the evidence in the case so far. Anyhow my thoughts will be with you and Horty on this great day of our lives. I would really like very much to be there particularly as we will be together alone.

80

I do not think the present case will finish till about the 12th or 15th July. I believe they are going to open the new Sessions about the 21st. Whatever happens I do hope they will not push me out of the Dept. when the Sessions ends. I would like very much to get back to Colombo but I dare not ask for it. They will then say that far from dictating to them where I should like to prosecute they will tell me to revert to the Bar. So I suppose that if I do get orders to carry on here I will have to do it.

Christy did write to me about his engagement but in his letter he wanted me to keep it entirely to myself. I knew that if I told you of it and they heard that you knew they would immediately hold you responsible for its getting known. You know their natures : Why the deuce worry about them ?

As for Horty's birthday in any case I'll not be able to be present as it is on a Monday. You can have a party for her birthday on Monday. I will give you some money for it when I get my salary by the end of the month: please invite just a few good friends not those who come and enjoy themselves and then forget us.

Exhibits
P 4
Letter
20-6-41
—continued.

I am glad to hear you have already enjoyed a fruit off the mango tree and that you all shared it. I knew you would want the pickle bottles back and I have got them ready here.

With fondest love to Horty and self.

10

Ever yours,
STANNIE.

2D3. Letter.

2D3.

The Resthouse,
Jaffna, 22-6-41.

2D3
Letter
22-6-41

My darling Merle,

Thanks for your letter of good wishes for yesterday. I hope you received my wire and letter too. I will try to come down for the next week-end. Please 'phone up Sam and ask him whether he has seen the car about which I wrote to him. I hope your father came round yesterday and that he did not shout the house down. This morning Nihal and I went over to Manik's place for string-hoppers. I am writing to the Gas Co., today.

How is my Horty? Love and kisses to both.

Ever yours,
STANNIE.

P 21. Letter.

P 21.

The Resthouse,
Jaffna, 3-7-41.

P 21
Letter
3-7-41

My darling Merle,

Thanks for your letter of yesterday's date. I sent Proctor Saheed a cheque last Friday in payment of Abdul Rahim's a/c. He has not acknowledged receipt of it yet. Please 'phone Abdul Rahim and tell them that the cheque was sent to their Proctor and ask them whether they have heard from him.

I am glad my Horty had a nice party and that everybody had a really good time. I was quite miserable that I could not be present for the party. Please remember me to Waldo. I see that he has taken up duties in Colombo. How is it you do not mention C. C. and Dot as among those present at the party? So your brother remembered Horty's b'day? How surprising.

I am sorry to hear about aunty Sellam. Please remember me to her and do all you can for her. Please get a bottle of Hennol for me for my

Exhibits
P 21
Letter
3-7-41
—continued.

hair and send it up. I have not received the parcel of cake as yet. It will come in the course of the day. I hope you are all enjoying the mangoes off our trees.

As things are this case is not likely to finish till the end of the month. So we shall consider ourselves fortunate to come down just in time for the August Races, if even then.

With fondest love and kisses to you and Horty.

Ever yours,
STANNIE.

P 36
Prescription
of Dr. F.
Gunasekera
9-7-41

P 36. Prescription of Dr. F. Gunasekera. 10

Mrs. S. Alles.

7 Potas Citras	gr. \overline{xx}	
Sodim Bicarb	gr. \overline{xx}	
Potas Bromidi	gr. \overline{xii}	
Syrup Aeranti	3 ÷	
Spt. Ammon Aromat	7 $\overline{\frac{x}{5}}$	
Tv. Belladonna	7 \overline{x}	
Ay. ....	.....3 ÷	
Oz. Hon ;		20
nith	$\overline{\frac{iii}{viii}}$	

S. 1/8 pt. G4 Hn.
One tin Glucose D.
9/7/41.

P 37
Prescription
of Dr. F.
Gunasekera
11-7-41

P 37. Prescription of Dr. F. Gunasekera.

Mrs. Stanley Alles.

7 Potass Citras	gr. \overline{xxv}	
Potass Bicarb	gr. \overline{xx}	
Syrup Aeranti	3 ÷	
Ay. Amon Aeranti	7 \overline{xv}	80
Tv. Cardam Co.	3 gr.	
Ay.	3 ÷	
Oz. han.		
nith	$\overline{\frac{iii}{xii}}$	

S. 1/12 pt.
11/7/41.

P 24.

P 24. Letter.

The Resthouse,
Jaffna, 11-7-41.Exhibits
P 24
Letter
11-7-41

My darling Merle,

I am terribly sorry to hear you are ill with Renal colic. Please get Dr. Frank to see you daily. Do not bother to write to me only see that I am informed as to how you are. My wretched job is such that I cannot leave this station unless it is very, very urgent without permission from the office. Besides with this heavy case in its present condition neither
10 of us can afford to take even half a day off, there is so much work to be done. So please do not misunderstand my not coming down.

I sent you 150 mangoes by Patrick last night. You must have got them now. Please send a few to Tom. Please thank Sam ever so much for his letter of information. It is really very kind of him to have taken the trouble to write. Please do not worry about your bills. I will fix all that up for you. So please get well soon both for my sake and Horty's.

Love and kisses,
Ever yours,
STANNIE.

20

P 25.

P 25. Letter.

The Resthouse,
Jaffna, 15-7-41.P 25
Letter
15-7-41

My darling Merle,

Thanks ever so much for your letter of the 13th, which I received only this morning. I am so glad to note that you are well enough to write if only in pencil. Please lie very quiet and do not attempt to do anything in the house. I am glad to hear that you passed the stones as this is bound to relieve the pain considerably.

I am sending you some mangoes tomorrow by a friend of mine. Please send some to aunty Sellam. I hope you liked the last lot I sent.
30 I was very worried when I got Sam's letter: that is why I rang up on Friday. Next Friday evening the Judge is throwing a party. Eddy left last night. I told him to ring you up and find out how you are. I hope he remembers to do it. It is getting hot again here: I do wish this wretched case will finish soon. How is my Horty? Give her a big hug and kiss from me.

Love and kisses,
Ever yours,
STANNIE.

I am sending you by a Mr. Asirwatham two packages of mangoes—
40 one lot in a bag and another in a box. Please send some from the bag to Mrs. Nihal Gunasekera.

c/o Lady de Mel, Ellesmere, Horton Place,
With your compliments.

S. A.
15/7.

Exhibits
2 D 1
Letter
17-7-41

2D1. Letter.

2D1.

The Resthouse,
Jaffna, 17-7-41.

My darling Merle,

Thanks ever so much for your letter of the 15th. I received it only this morning. I sent you a letter yesterday enclosing a cheque for Rs. 10.

Please pay the tax on Invader Rs. 2.50 and keep the balance. Please see that Whisky is let out only at night, and if anyone from the Municipality should come round please say we have only one dog in the house. As you will see from my letter I have informed the Municipality that 10 Rajah has removed the bitch and they should look to him for payment of the tax.

I am indeed very glad to see that you are up and about but please go very easy. I will send you the money early next week. Meanwhile please get all you want from Elephant House.

I fully approve of the draft letter and have nothing to add. It hits the old fool good and hard. Your father thinks that ours is the only house where he can show off his airs. Let him wait till I get back, he will get a few shocks then : he will probably collapse from the shock.

I hope you enjoyed the last lot of mangoes I sent. Mrs. Lud. has 20 written thanking me for the grafts. I hope you always remember to send them some mangoes too. I hope the grafts are all bearing at home.

A big hug and kiss to my Horty.

Love and kisses,
Ever yours,
STANNIE.

P 22. Letter.

P 22.

The Resthouse,
Jaffna, 21-7-41.

My darling Merle,

Thanks very much for your letter of the 18th instant. I received it only this morning, I did receive a bottle of Hennol from Millers. Thanks very much. I am writing to Wilson & Kadirgamar today. I am glad to hear you distributed the mangoes, but sorry to hear you had none. I will send you some more if I get the chance.

Just like the old man to want everything he sees. I suppose he will want some one to choose the best for him. We had a grand party at the Judge's on Friday, needless to say there was no dancing. Yesterday evening Richard Silva invited the gang of us for tennis, tea and string-hopper feed. It is so nice to taste a southern curry sometimes. Who 40 gave you the idea that I have a soft corner in my heart for Teddy? Good gracious me, that is Sam's preserve. I would not dream of treading on his corns. Thanks also for the copies of the Causerie you sent me. Was

P 22
Letter
21-7-41

it sent by one of the boys from the G. F. H. ? as it was addressed on a G. F. H. envelope. I saw an advertisement the other day " Louis Moreno and his Band ". Does that mean that Teddy has left. How is my Horty ? I am just dying to see both of you.

Exhibits
P 22
Letter
21-7-41
—continued.

Love and kisses,
Ever yours,
STANNIE.

2D2. Letter.

2D2.

The Resthouse,
Jaffna, 23-7-41. 2 D 2
Letter
23-7-41

10

My darling Merle,

Thanks for your letter of the 21st. I received it yesterday. I could not reply immediately as I had to go to Mallakam Courts to lead evidence against Mrs. N. M. Perera. If the telephone people should ring again please tell them I will send them a cheque end of the month. What a pity the chap with the tips did not ring earlier. Anyhow, better luck next time.

I will send you a cheque as soon as I get my salary. Today is a holiday so I am sitting down to some work as the office is sending me tons of work and I have hardly any time to attend to it. How is my Horty ? I wonder whether she will recognise me after all this length of time. I am just counting the days for my return as I am thoroughly sick of this place. Can you believe it that by the end of this month I shall have been here for six months except for a break of two weeks at Easter. I do hope I will not have to revert to the Bar when these Sessions are over.

Love and kisses,
Ever yours,
STANNIE.

P 11. Letter.

30 P 11.

The Resthouse,
Jaffna, 31-7-41. P 11
Letter
31-7-41

My darling Merle,

Thanks very much for your letters I received yesterday and today. I am glad to hear the old man is taking all his stuff away. I do hope that this will mean he does not propose to come to our place hereafter. You will be surprised to hear that T. B. has got a Proctor to send me a letter of demand. This is the man who made a convenience of our house where ever he lived. Such is the world !

I hope Hirdaramani's will agree to our suggestion and that they have sent you the receipt. I only hope we will be able to get the G. C. C.

Exhibits
P 11
Letter
31-7-41
—continued.

Governor's Cup Sweep. We will then lift our heads and keep everybody in their places. How is my Horty? Please do not send her to Kandana on any account.

Love and kisses to both,
Ever yours,
STANNIE.

Salaams.

P 44. Letter.

P 44
Letter
6-8-41

P 44.

The Resthouse,
Jaffna, 6-8-41.

My darling Merle,

Thanks for your letter of the 5th. Just like you to say I am coming 10 down for the races only. I will be leaving this on Friday night and will be in Colombo on Saturday morning. Please do not tell anyone I am coming down for the week-end.

In any event I do not want your father to know it. Your news about brother really surprises me. I wonder what it is over. I suppose Irene's cackling has done it again.

Please tell Horty that I am coming down to play with her for a long time.

Love and kisses,
Ever yours, 20
STANNIE.

P 27. Letter.

P 27
Letter
15-8-41

P 27.

Jaffna, 15-8-41.

My darling Merle,

Thanks very much for your letter of the 13th. We do not finish this week after all but will definitely be finishing about the middle of next week. So you can just imagine how I am counting the days to pass. Please do not fail to 'phone Ernie.

I miss both you and Horty terribly. Last night Asoka invited us for dinner to his place at Kankasanturai. There is a Cattle Show on here 30 now, and believe it or not, all of us went for it, for lack of something else to do.

Next Sunday we have been invited to tennis and morning tea at the United Club here.

It is getting very warm here once again and the dust is terrible.

Love and kisses,
Ever yours,
STANNIE.

Since writing overleaf I have received your letter of yesterday's date. Exhibits
 I really fail to see why I am being blamed for everybody's nonsense. P 27
 What have I done to E. G. P. for him to be still annoyed with me? It Letter
 was only recently I wrote him a nice letter. Mother did come and see 15-8-41
 me when I was down for Easter after you had gone back to Bandarawela. —continued.

10 I really fail to see what my domestic affairs have to do with my job unless they want to blame me for the gossip in Colombo.

S. A.

1D4. Extract from Police Information Book.

1D4.

Extract from the Information Book of Cinnamon Gardens. Date :
 19-12-41, page 70, para. 144, time 9-30 p.m. Mr. S. Alles, Advocate of
 75, Gregory's Road, comes in and states :—

1 D 4
 Extract from
 Police Infor-
 mation Book
 19-12-41

Owing to domestic differences I am leaving the house with my child.
 As I propose to remove my furniture and personal belongings I wish an
 20 officer to accompany me to my residence, to take an inventory of the
 goods I am removing. I am leaving at this hour as my wife has left the
 house to go to a dance and to avoid an unpleasant scene. Read over and
 explained.

Sgd. STANISLAUS ALLES.

P 2. Letter.

P 2.

“Laurentum,” Ward Place,
 Colombo, 19th December, 1941.

P 2
 Letter
 19-12-41

Dear Merle,

I have repeatedly warned you regarding your continued association
 30 and intimacy with Dr. Samahin but you persisted in this behaviour not-
 withstanding my entreaties to desist from this course of conduct which
 has now resulted in an open scandal.

Your conduct, repeated violent quarrels, and outbursts have made
 living with you insupportable and I had no alternative but to leave the
 house with the child and I am doing this at this hour to avoid an un-
 pleasant scene.

My attitude in this matter should have sufficiently made it obvious
 to you of my disgust and disapproval. I am also taking this step in the
 interests of the child.

40 I now propose taking the necessary steps for a dissolution of the
 marriage and such further action as I may be advised by my lawyers,
 who will communicate with you in due course.

Yours sincerely,
 STANNIE.

Exhibits
I D 16
Certificate of 1D16.
Posting
20-12-41

1D16. Certificate of Posting.

Received a letter addressed to—

Mrs. S. Alles,
“Merlton,” Gregory’s Road,
Cinnamon Gardens.

From

Mr. Stanislaus Alles,
“Laurentum,” Ward Place,
Colombo.

20th December.

10

1D5. Letter.

I D 5
Letter
22-12-41

1D5.

“Merlton,”

Gregory’s Road,

Colombo, 22nd December, 1941

Dear Stannie,

When I returned from the Medical dance which you persuaded me to attend with Dr. Samahin, my brother and sister on Friday I found that you had left the house with Horthy taking everything which I suppose you thought your own. You now send me a letter addressing me “Dear 20 Merle”. I had no warning that I would from “my darling Merle” become “dear Merle” overnight. However that may be your letter contains a tissue of statements which you know fully well is false and unfounded. Will you please tell me when you ever warned me regarding my “continued association and intimacy with Dr. Samahin”. I do not quite follow what you mean by “continued intimacy”. I wish to do you the justice of not putting any sinister interpretation on it. But dear Stannie why do you so easily and readily forget that I have permitted Dr. Samahin to call whom you address in such affectionate terms as Sam and Sambo and whose company you delighted in with your express permission and 30 approval. You will recall that when you were in Jaffna only a short time ago I wrote to you that your dear mother and my own father and brother were protesting against our association with Dr. Samahin and you wrote back to say that you thoroughly disapproved of their protests and requested me to treat your friends whenever they called at our home as you said you had a few friends and you wished to keep them. Since your return from Jaffna you made not the slightest difference in your behaviour towards Dr. Samahin nor did you ask me much less entreat me to desist from meeting Dr. Samahin. On the contrary bring to your mind an incident only a few days ago, when I take it you still thought 40 me to be “My darling Merle,” you remember the visit of Father O’Halloren who came here on behalf of your mother to talk to you about our association with Dr. Samahin. Do you, my dear Stannie, forget the reply you gave the Rev. Father. Is it necessary that I should put it down on paper.

Do you not really feel humiliated at your atrocious conduct in leaving me in my present condition under circumstances of which I realize, knowing you as well as I do, you must be ashamed of. My dear Stannie I will not do you the injustice of thinking that this is your doing. There are people, both yours and mine who never wished you and me well. Your own feelings to your own people and to my own dad prior to last Friday you best know. Unfortunately my enemies and your enemies have now captured you and you are now a prisoner in their hands. I do not wish to say much more to embitter feelings of parties concerned. Your statement
 10 " your conduct, repeated and violent quarrels and the outburst have made living with you insupportable " strikes me as a little ludicrous. I will not say that since we were married we have had no quarrels or outbursts but they have always been temporary and no sooner they take place we have made up. What I really like to know my dear Stannie is, you have known me so long and so well why you did not tell me you wanted to leave me whatever the reason was. Had you done so you know that you and I could have very easily discussed the matter in our interest as well as that of our child. Do you think that you have done right in leaving me taking my child of whom we are both very fond to your mother's house to
 20 which you know I could under no circumstances come and to which you have asked me under no circumstances to go or send our child. I am still your wife and she will always be my child. You say you are taking the necessary steps for the dissolution of our marriage. If you are so inclined there is no power on earth that can prevent it but being unaware of anything I have done for you to take so irrevocable a step might I ask you to come home with the child where you both will be received with the customary affection. If for some reason you cannot just now make up your mind to come back might I earnestly beg of you who can I think appreciate the feelings of a mother to send back my child to me at this
 30 time of peace and goodwill. The child as you know is not in the best of health and requires the attention which you and I know she will not receive at the hands of those in whose charge she is now. Please be good enough to send a reply by return of post as I shall then know whether I am to spend Christmas in the intolerable loneliness of this house or in the company of you both or at least of my child.

I will not say yours sincerely but

Ever yours,
 MERLE.

P 31. Chit from 1st Defendant to Plaintiff.

40 P 31.

Please hand over to bearer my clothes, Horty's and Velu's brought by the dhoby recently.

S. A.
 27/12.

Exhibits
 1 D 5
 Letter
 22-12-41
 —continued.

P 31
 Chit from 1st
 Defendant
 to Plaintiff
 27-12-41

Exhibits
P 32
Letter
27-12-41

P 32. Letter.

P 32.

"Merlton,"
Gregory's Road,
Colombo, 27-12-41.

Dear Stannie,

Herewith I am sending by bearer the gardener your clothes which I just received from dhoby.

I am also enclosing a complete list of the clothes, please be good enough to acknowledge receipt.

MERLE.

Received 2 frocks with many thanks.

10

MERLE.

27-12-41.

Stannie	Hortense	Velu	
2 white coats	4 frocks	2 white cloths	
2 white trousers	2 petticoats	1 pillow case	
3 silk shirts	2 vests		
1 coloured shirt	1 draw sheet		
2 silk collars	1 sheet		
1 coloured collar	2 pairs socks		
2 stiff collars	4 knickers		20
1 stiff shirt	4 rompers		
3 bands	1 pyjama suit		
4 white handkerchiefs	1 coat		
2 coloured handkerchiefs			
5 banians			
1 pyjama			
1 sarong			

MERLE.

27-12-41.

1D1. Extract from Jaffna Resthouse Occupation Book. 30

1D1
Extract
from Jaffna
Resthouse
Occupation
Book
(1941)

1D1.

Signature of Travellers.	Time of Arrival. Date. A.M. or P.M.	Departure. Date A.M. or P.M.	
Sgd. S. Alles	... 2-2-41 6 A.M.	... 17-2-41 6 A.M.	
Sgd. S. Alles	... 17-2-41 6 A.M.	... 1-3-41 6 A.M.	
Sgd. S. Alles	... 1-3-41 6 A.M.	... 1-4-41 6 A.M.	
Sgd. S. Alles	... 20-4-41 7 A.M.	... 1-5-41 7 A.M.	
Sgd. S. Alles	... 1-5-41 6 A.M.	... 1-6-41 6 A.M.	
Sgd. S. Alles	... 1-6-41 6 A.M.	... 1-7-41 6 A.M.	
Sgd. S. Alles	... 1-7-41 7 A.M.	... 1-8-41 7 A.M.	40
Sgd. S. Alles	... 1-8-41 6 P.M.	... 21-8-41 6 P.M.	

P 43. **P 43. Card.** Exhibits
P 43
Card
1941

With love and Best Wishes,
 from
 Mani.

1D7. **1D7. Certificate.** **1D7**
Certificate
5-1-42

“ Merlton,
 Gregory’s Road,
 Colombo, 5th January, 1942.

The bearer Alice was employed under me for an year as my cooky,
 10 during which time I have always found her a hardworking clean and
 obliging woman, she is a good cook and knows her job well. I could
 recommend her to anybody who wants the services of a good servant.

MERLE ALLES,
 (Mrs. S. Alles.)

X 1. **X 1. Letter.** **X 1**
Letter
14-1-42

X 1. Colombo, 14th January, 1942.
 S. ALLES, Esq.,
 “ Laurentum,” Ward Place,
 Colombo.

20 Dear Sir,

We are instructed by our client Mrs. Merle Alles to state that she
 desires to see her child of whose custody and care she has been unlawfully
 deprived by you and to request you to be good enough to make arrange-
 ments to allow her access to the child at a place which can be fixed upon
 by arrangement with our Mr. Jayawardene.

We may state that she is, as you are aware, in a delicate state of
 health and we trust that you will accede to our request and give her no
 room for anxiety on this score.

Yours faithfully,
 Sgd. MERRILL PEREIRA & GUNASEKERE.

Exhibits
X 2
Letter
16-1-42

X.2. Letter.**X 2.**

Colombo, 16th January, 1942.

MESSRS. MERRILL PEREIRA & GUNASEKERA,
Proctors & Notaries,
Colombo.

Dear Sirs,

With reference to your letter dated the 14th instant addressed to Mr. S. Alles, I am instructed to state that my client under all the circumstances is not prepared to accede to your request.

Yours faithfully, 10
Sgd. H. A. ABEYWARDENE.

X 3
Letter
31-1-42

X 3. Letter.**X 3.**

31 Jan., 42.

My darling precious Baby,

Herewith I am sending you 5 rompers, which you need so badly.

I hope they will fit you nicely. I have made them bigger than your usual size, for you are now growing bigger and tall.

How are you keeping darling? Hope you are very happy with dad not giving him any trouble and worry.

Mummy is always thinking of you and dying to see you which I hope 20 will be soon.

Keep well and happy darling. God bless you. Mummy's always praying for you.

Cheerio my beloved baby and get dad to acknowledge receipt of parcel.

With all my love and kisses,

Yours very lonely,
MUMMY.

X 4
Envelope
(undated)

X 4. Envelope.**X 4.**

Miss Hortense Alles,
C/o S. Alles, Esq.

30

Endorsement : Herewith five rompers returned.

P 47. **P 47. Letter.** Exhibits
Pendennis Avenue, P 47
Colpetty, 20-7-42. Letter
20-7-42

My dear Merle,

Thank you very much indeed for your letter of congratulations. It was so very nice of you to have thought of me.

So how are you keeping? Baby is getting on nicely.

With love,
Yours sincerely,
AMARA.

10

1D8. **1D8. Letter.** 1 D 8
No. P. E. 3056, Letter
General Hospital, 30-10-42
Colombo, 30-10-42.

Dear Sir.

D. C. Colombo 586/D.

With reference to your letter dated 19th instant, I have the honour to inform you that the records mentioned therein are not available here. I have written to Dr. Samahin inquiring whether he had removed them by mistake. If, however, the records are traced, copies will be forwarded.

H. A. ABEYAWARDANE, *Proctor S. C. & Notary Public.*
Yours faithfully,
Sgd. C. W. WILLENBERG,
Medical Superintendent.

1D9. **1D9. Letter.** 1 D 9
No. H. A. 7/41. Letter
20-11-42

Dear Sir,

D. C. Colombo 586/D.

With reference to your letter of the 13th instant I have to inform you that Dr. Samahin has gone to South India on leave and is due back on the 24th instant.

Dr. Samahin's return is awaited.

Sgd. Illegibly,
for Director of Medical & Sanitary Services.

Colombo, 20th Nov., 1942.

H. A. ABEYWARDENE, Esq.,
Proctor & Notary.
No. 132, Hulfisdorf, Colombo.

Exhibits
P 23
Copy of
Prescription
of Dr.
Wickrama-
sooriya
1-12-42

P 23. Copy of Prescription of Dr. Wickramasooriya.

P 23.

Colombo, 1st Dec., 1942.

For MRS. S. ALLES.

135583

26-11-41

Chloral Hydrate	gr. x.
Pot. Bromide	gr. vii. ss
Liq. Sedans	zi.
Aq. ad.	zi.
Mitte	zviii.
S zi. b.d. p.c.	

Sgd. G. A. WICKRAMASOORIYA. 10

1 D 11
Letter
14-12-42

1D11. Letter.

1D11.

No. CA 7/3140.
General Post Office,
Colombo, 14th Decr., 1942.

Dear Sir,

D. C. Colombo No. 586/D.

With reference to your letter dated the 13th inst., I have to state that telegrams are preserved only for a period of 3 months from the date of despatch. The telegram dated 18th April, 1941, referred to by you, has accordingly been destroyed after the usual period.

Yours faithfully, 20

WILFRED CABRAAL,
for Postmaster-General.

S. Alles, Esq.,
"Laurentum," Ward Place,
Colombo.

2 D 6
Letter
19-12-42

2D6. Letter.

2D6.

Colombo, 19th Dec., 1942.

MESSRS. MERRILL PERERA & GUNASEKERA,
Proctors, S. C.,
Colombo.

Dear Sirs, 30

I thank you for excusing my presence in Court on Monday the 21st inst., on which date I have been summoned by you to give evidence in the Alles divorce case. As you may not be aware, if I do not attend office, it counts as no pay leave. I shall be obliged if you will let me know a day earlier when you require my presence in Court. I note that a car will be sent for me to the Secretariat Buildings.

Thanking you.

Yours faithfully,
Sgd. I. LUDOWYKE.

2D7. Letter.**2D7.**

Colombo, 22nd December, 1942.

Exhibits
2 D 7
Letter
22-12-42

MISS IRIS LUDOWYKE,
R. A. F. Headquarters,
Colombo.

Dear Madam,

D. C. Colombo No. 586-D.

With reference to your letter received by us yesterday we have to inform you that with reference to the summons issued on you as a witness in the above case your evidence will be required on or after the 18th January, 1943. Your presence is necessary in Court on that date and a further communication will follow if we can apprise you of the exact date.

Yours faithfully,

MERRILL PEREIRA & GUNASEKERA,
Sgd. C. E. JAYEWARDENE,
Partner.

1D13. Statement of Telephone Trunk Calls.**1D13.**

Statement of Telephone Trunk Calls to and from Colombo 9976 and Dambulla 2 (Hospital) from 25th March, 1942, to 15th April, 1942, and to and from Colombo Telephone No. 9928 and Dambulla 2 from 1st May, 1942, to 30th September, 1942 :—

1 D 13
Statement of
Telephone
Trunk Calls
(1942)

From Telephone No. 9976 to Dambulla 2 :

25th March to 31st March ... No calls
1st April to 15th April ... No calls

From Telephone No. Dambulla 2 to Colombo 9976 :

25th March to 31st March ... No calls
1st April to 15th April ... No calls

From Telephone No. 9928 to Dambulla 2 :

80

Time Call

Date.	Books.	Time on	Off	Charges Rs. cts.
7-5-42	... 9-04 a.m. ...	9-18 a.m.	9-24 a.m. ...	2 00
1-6-42	... 10-20 a.m. ...	10-45 a.m.	10-48 a.m. ...	1 00
30-7-42	... 1-27 p.m. ...	1-39 p.m.	1-41 p.m. ...	1 00
31-7-42	... 10-07 a.m. ...	10-54 a.m.	11 a.m. ...	2 00
	August	... No calls		
	September	... No calls		

Exhibits
1 D 13
Statement of
Telephone
Trunk Calls
(1942)
—continued.

From Dambulla 2 to Telephone No. 9928 :
1st May to 30th September ... No calls

The above particulars are certified as correct.

Sgd. Illegibly,
Asst. Superintendent of
Telecommunication Traffic.

17-11-42.

1 D 10
Statement of
leave taken
(1941 to
1942)

1D10. Statement of Leave taken.

1D10.

Statement of Leave taken by Dr. T. S. M. Samahin during
the Period 1st March, 1941, to 31st July, 1942.

10

29th March, 1941	...	...	...	1 day	
10th April, 1941	...	...	...	1 day	
19th April, 1941	...	...	...	1 day	
24th June, 1941	...	...	...	1 day	
21st October, 1941, to 20th November, 1941	...	...	...	31 days	
21st November, 1941, to 11th December, 1941	...	...	...	21 days	
12th December, 1941, to 13th December, 1941	...	...	...	2 days	
14th December, 1941, to 31st December, 1941	...	...	...	18 days	
1st January, 1942, to 16th February, 1942	...	...	...	47 days	
17th February, 1942, to 24th February, 1942	...	...	...	8 days	20
3rd April, 1942, to 5th April, 1942	...	...	...	3 days	
14th April, 1942 to 23rd April, 1942	...	...	...	10 days	
27th May, 1942, to 11th June, 1942	...	...	...	16 days	
27th June, 1942, to 28th June, 1942	...	...	...	2 days	

Certified correct :

Sgd. Illegibly,
for Director of Medical & Sanitary Services.

Colombo, 27th October, 1942.

P 48 A
Letter
(undated)

P 48A. Letter.

P 48A.

Ketetiya, 30
Thursday.

Merita darling,

Thanks for your letter. Sorry I could not write earlier. So terribly busy with my favourite wife "Kakatiya" who keeps me fully occupied I can assure. Odd bits of furniture keep trickling in and out now I have got everything I need, to carry on till Pat arrives.

How lucky you are to be up in "dem dere hills" Colombo has been impossible. 91° in the shade. But it has mercifully rained these last few days and its a little pleasanter now.

I am on holiday till the 15th and I don't quite know what to do with myself. All my friends are up in N'Elia. Everybody is trying to persuade me to play in the doubles, but I have definitely made up my mind

not to play. I am so broke and even a short spell at N'Eliya will I am sure be very expensive.

I am leaving for Deniyaya with Diel this afternoon. We hope to turn up in Kandy. Anything to get away from Colombo.

I think Stannie is back, because I caught a glimpse of him as he flashed past in a car with Samahin.

Dad seems to be quite well, but jogging along as usual. Don't be surprised I might see you in Bandarawela.

How's Hortense? I hope she has put on a few inches. Give her a big hug for me. Regards to sister.

BROTHER.

P 48. Envelope.

P 48.

MISS MERITA DE COSTA,
Valencia,
Bandarawela.

P 48
Envelope
(undated)

2 D8. Letter.

2 D8.

Colombo, 14th January, 1943.

2 D 8
Letter
14-1-43

MISS IRIS LUDOWYKE,

R. A. F. Headquarters,
Colombo.

20

Dear Madam,

D. C. Colombo No. 586-D.

Further to our letter to you dated 22nd November, 1942, we have to inform you that your presence in Court is necessary on the 18th instant.

Yours faithfully,

MERRILL PEREIRA & GUNASEKERA,
Sgd. C. E. JAYEWARDENA,

Partner.

1 D20. Letter.

so 1 D20.

The Chartered Bank of India,
Australia & China,
P. O. Box No. 27,
Colombo, 22nd January, 1943.

1 D 20
Letter
22-1-43

No. C/3076:

MRS. L. M. ALLES,
Ward Place,
Colombo.

Madam,

With reference to your letter of date we enclose a statement of account as requested.

40

Yours faithfully,
Sgd. Illegible,
Agent.

1 D 19. Bank Statement

IN ACCOUNT WITH

THE CHARTERED BANK OF INDIA, AUSTRALIA & CHINA, COLOMBO.

Exhibits
1. D 19
Bank
Statement
1943.

Mrs. L. M. Alles

DATE		PARTICULARS	WITHDRAWALS		DEPOSITS		DR. OR. CR.	BALANCE	
1942	Nov. 30	Balance			1,053	84			
Dec.	3	Cheque Book.		3					
	4	Cheque	646	25					
	30				700				
	31	Balance		50					
				1,675					
				84					
				1,758		1,753	84		
Dec.	31	Balance					Cr.	1,675	84
1943	Jany. 5		649	15					
	18		648	30					
	19	Cash			340				
				45					
					2,015	84	Cr.	1,970	84

2 D 5 Envelope2 D 5.
Envelope
(Undated).

R	COLOMBO A
	No. 664

POST OFFICE EXPRESS DELIVERY

Mrs. S. Alles

"Merlton"

Gregory's Road

CINNAMON GARDENS

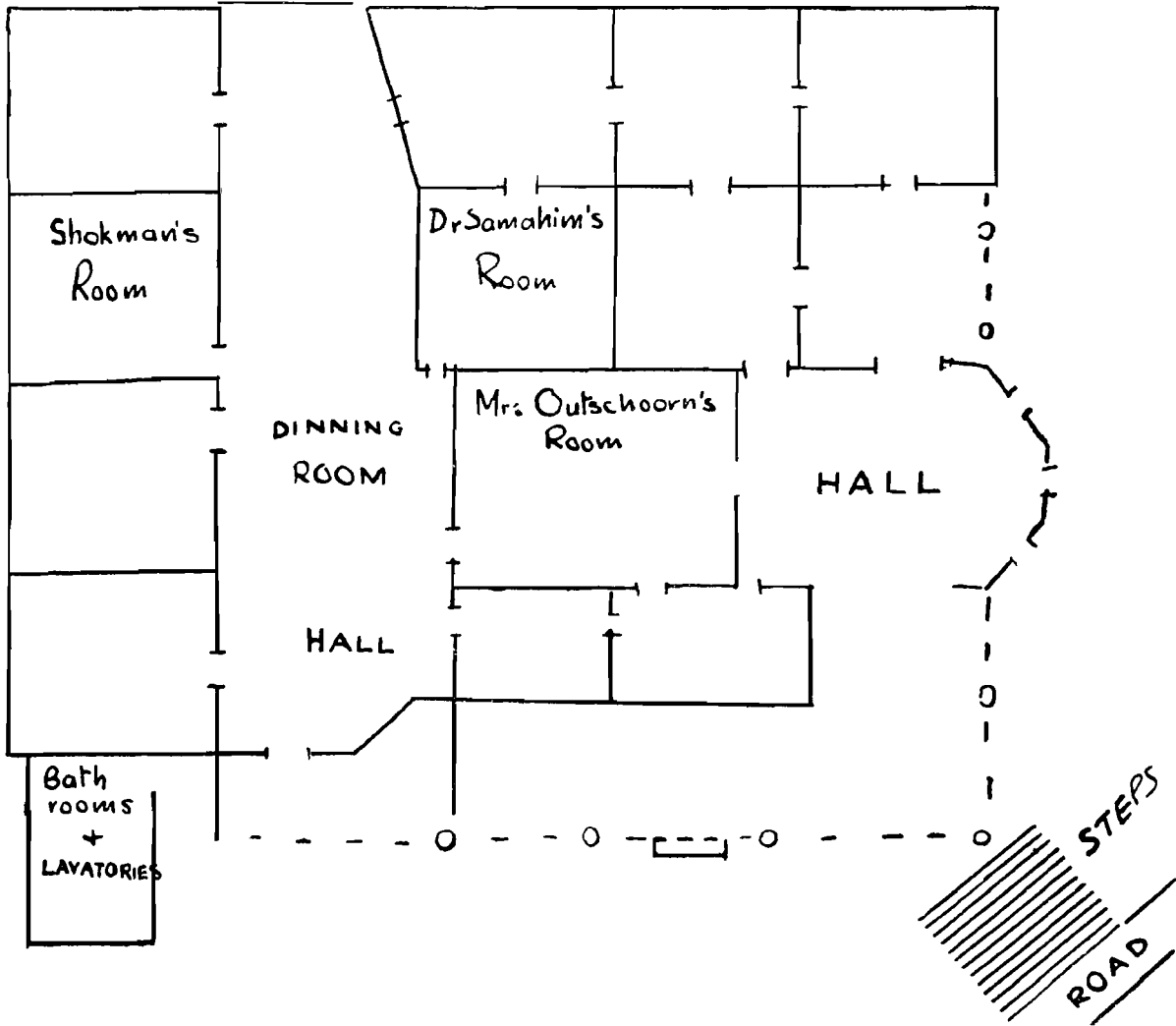
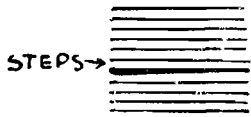
KITCHEN QUARTERS

P 35

P 35
Sketch of
Outschoorn's
House.

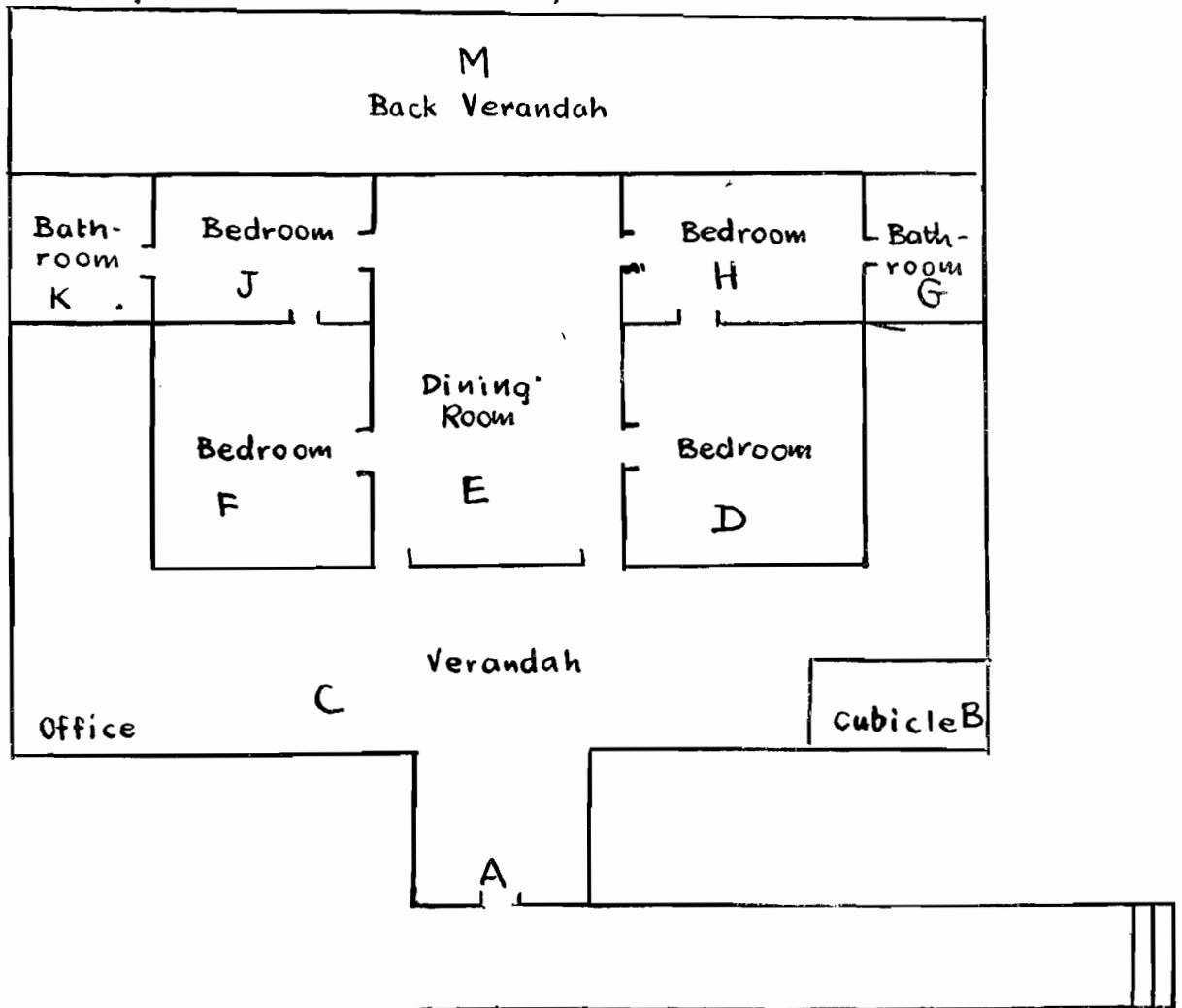
SKETCH OF OUTSCHOORN'S
HOUSE

Bath rooms
Lavatories



1 D 12
Sketch of
Jaya-
wickrema's
Bungalow
(undated)

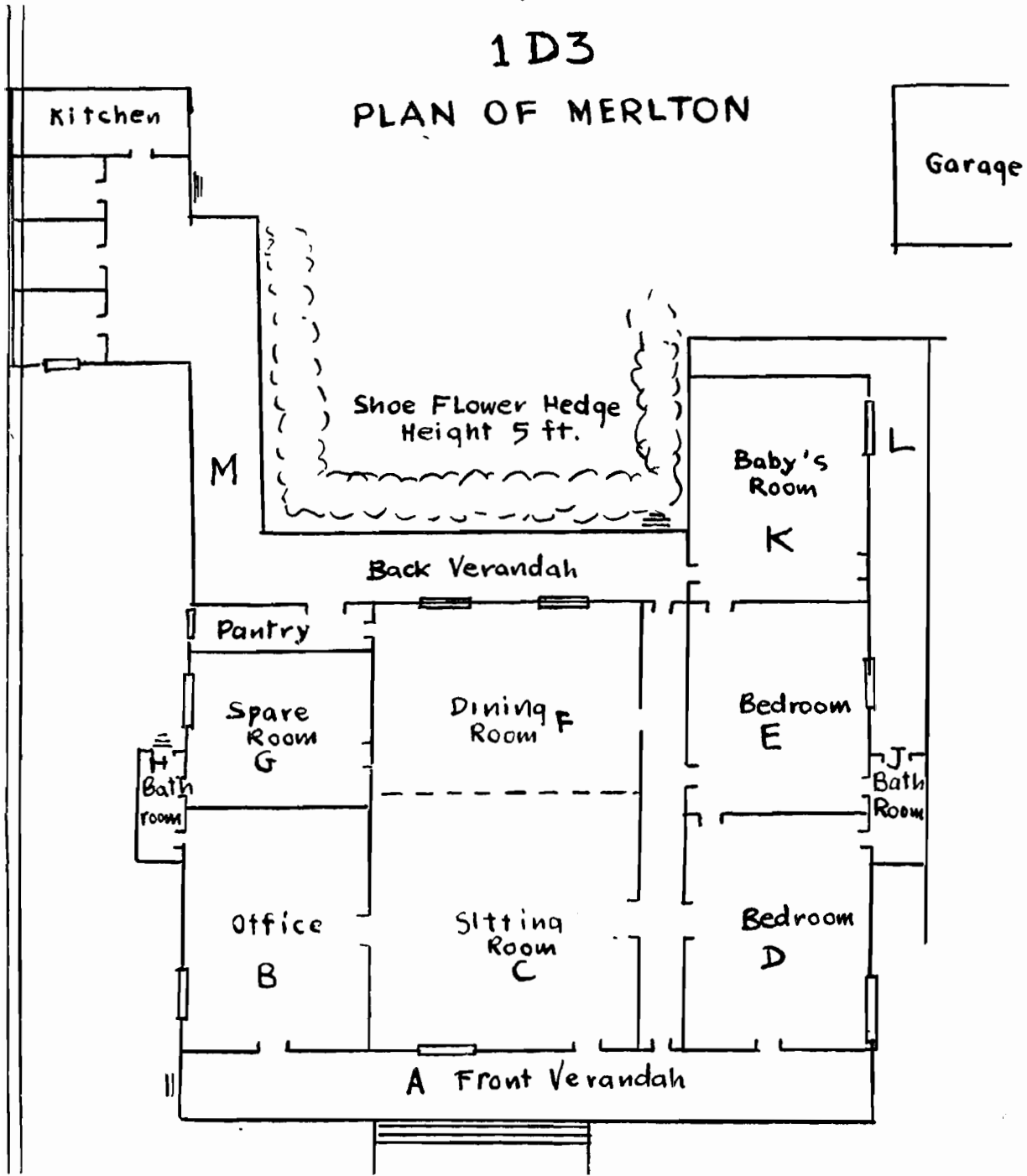
1 D 12
SKETCH OF JAYAWICKREMA'S BUNGALOW



1 D 3

PLAN OF MERLTON

1 D 3
Plan of
Merlton
(undated)



No.....

Supreme Court of Ceylon
Nos. 118 & 119 of the year 1944

District Court, Colombo
Case No. 586 D

*In His Majesty's Privy Council on an Appeal
from the Supreme Court of Ceylon*

BETWEEN

MERLE ALLES *nee* DE COSTA of
Kandana.....*Plaintiff-Respondent*

AND

S. ALLES, Advocate, of Colombo.....*Defendant-Appellant*
(also referred to as 1st Defendant)

AND

DR. T. S. M. SAMAHIN of Dam-
bulla.....*Added Defendant-Respondent*
(also referred to as 2nd Defendant)

RECORD
OF PROCEEDINGS
